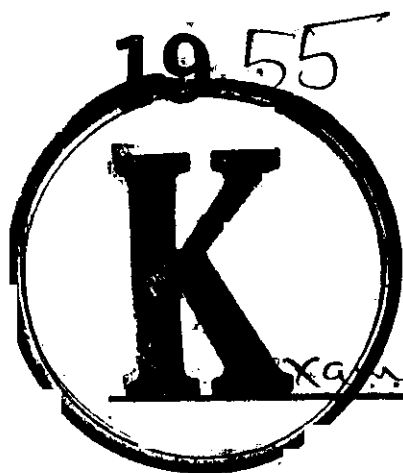




File No.

S Kanara 3/55

Legal

DEPARTMENT

E

BRANCH

Subject:—

Suits. - Kanara

C. S No. 183. of 1954

Mr. S. Naik - - - - - Plff.

v/s

The State of Bombay - - - - - Deft

To recover Rs. 39/- being the arrears of his
pay from the month of Feb. to Nov. 1954

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E

File No

S Kanara 3/55

3/55

No.S-6-A of 1955.
Poona, 1.7th January 1955.

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay, 1.

Subject:- Suit against the State by Shri
Manjunath Sannayya Naik,
Vaccinator, Karwar - Report sent
on -



The Collector of Kanara District wrote to the Assistant Director of Public Health, S.R.D., Belgaum, in his letter No.T.R.A.7270 dated 23rd December 1954, that a summons has been issued against the State of Bombay by the Civil Judge S.D.Karwar in a suit filed by Shri M.S.Naik and a copy of the summons has been sent to the District Government Pleader, Karwar for further action. The Collector also forwarded to the Assistant Director of Public Health, S.R.D., Belgaum a copy of the plaint received along with the summons. That officer was required by the Collector to draft a report under Rule 118 of the Law Officers Rules with the help of the District Govt. Pleader, Kanara, if necessary. The Collector has also stated that the Court has granted 4 weeks' time to file a written statement in the matter. The A.D.P.H., S.R.D. Belgaum has, thereupon, forwarded the papers to me for further instructions. Although it was his responsibility to furnish a detailed report under Rule 118, as I am the principal officer concerned with the facts relating to the suit, I am myself furnishing a report as required under Rule 118.

1. (i) The number of the suit is O.S.183 of 1954.

(ii) The date of the suit is 10-12-1954 and the Court in which it is instituted is that of the Civil Judge, S.D. Karwar.

(iii) The names of all the parties :

Plaintiff - Shri Manjunath Sannayya Naik, Vaccinator, Karwar.

Defendant - The State of Bombay.

(iv) The amount or value of the claim
Rs.39/- for all purposes.

(v) The date fixed by the Court for the first hearing:
4 weeks' time is granted for filing a written statement.

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I have sent a telegram to the Collector of Kanara, Karwar to ask the Govt. Pleader to request for further time for about a month to file a written statement in order to enable Govt. orders being obtained for the defence of the suit.

(vi) Notice of the suit has ~~not~~ been given under Section ⁸⁰ 18 of the Civil Procedure Code. The date of the notice is 6.6.54

2. (a) A copy of the plaint in English together with copies of the documents annexed to the plaint are attached herewith.

(b) As the copy of the plaint is in English, no translation is furnished.

(c) (i) The circumstances which led to the filing of the suit are furnished below:-

As stated by the Plaintiff in the suit plaint, a Charge Sheet No.V/10564/1951 dated 14/15th September 1951 was framed against the plaintiff by the A.D.P.H., S.R.D., Belgaum. A copy of the charge sheet is herewith enclosed. The A.D.P.H., S.R.D., Belgaum furnished a report of his enquiry in his letter No.V/10289 dated the 23rd September 1952. A copy of the Enquiry Officer's report is herewith attached. I passed orders on this report in my Memo No.S-6-27421-A dated 25th October 1952, a copy of which is herewith attached. In my proceedings No.S/6-3066-A dated the 6th ^{February} April '53 I passed final orders reducing Shri Naik's pay by Rs.4/- p.m.. A copy of my orders is herewith enclosed. I had asked the A.D.P.H., S.R.D. therein to inform Shri Naik the present pay as well as the pay he would draw after effecting reduction. I also asked the A.D.P.H., S.R.D., Belgaum to furnish a copy of his orders to the Vaccinator to me. The A.D.P.H., S.R.D., informed the Vaccinator in his Memo No.V/1866 dated the 7/9th February 1953 that his pay of Rs.57 is reduced by Rs.4 and his pay after reduction will be Rs.53/-. Of his own accord,

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however, the Asstt. Director had added the phrase "for a period of one year without effect on his future pay". This is not to be found in my orders of punishment. A copy of the A.D.P.H., S.R.D.'s letter is enclosed herewith. This remained to be put up for my personal perusal and the fact that the A.D.P.H., S.R.D. had misunderstood my orders and made the reduction to apply for only one year ^{without} ~~with~~ effect on the future ^{pay} ~~of~~ of the vaccinator remained to be noticed by me until a much later date. The fact that the A.D.P.H. had misconstrued my orders came to light when Shri Naik appealed to Govt. for revision of my orders. His appeal is dated 29.4.53. In that appeal, he referred to 2 enquiries conducted against him. At the end of the second enquiry in which all the charges had been proved Shri Naik was given an opportunity to express regret for his misconduct in which case he was informed that a lenient view would be taken in view of the punishment already awarded to him as a result of the first enquiry. Govt. in its letter, L.S.G. and P.H.D. No. PHD.1753/6003/D dated 27th July 1953 agreed with me that Shri Naik's appeal needed no revised consideration.

When the discrepancy between my orders and the orders ~~affixed~~ issued by the Asstt. Director, Public Health, S.R.D. came to my personal notice at this time, I asked that officer to explain how he issued orders contrary to what I had passed. The A.D.P.H. then reported in his letter No. ^V1360 dated the 4th November '53 that he issued those instructions as a result of misunderstanding. He issued fresh instructions correcting the expression "for a period of one year without effect on his future pay" into "permanently". A copy of the A.D. P.H., S.R.D.'s letter to the Medical Officer of Health No. V/3602 dated the 4th November 1953 is herewith attached. (page 407 of the file)

The plaintiff contends that as the order No. V/1866 dated 7/9th February 1953 was once passed and communicated to him and further on appeal confirmed by Government in its letter No. PHD.1753/6003/D dated 27.7.53, an amendment to those orders subsequently made is illegal. The plaintiff further pleads that once ~~the order was passed~~ an order of punishment was passed and communicated to the defaulter in an enquiry, it is final so far as the officer passing the same is concerned and he becomes functus officio in the matter and cannot himself alter it at all. The fact that the initial order had been confirmed by Govt. as alleged is a further argument in favour of the plaintiff. He has therefore averred that enhancement of the punishment by an amendment is entirely without jurisdiction and quite illegal.

There may be force in the plaintiff's argument if the A.D.P.H., S.R.D. ^{communicated} had passed my orders without any alteration. While it is true that specific orders passed by the competent authority in the first instance on completion of the enquiry are binding and would not admit of any subsequent amendment, it is entirely idle to contend that ~~all~~ such orders lawfully passed by a competent authority when wrongly communicated to the party concerned should not be amended in a proper form ~~and~~ ^{and conforming to} notwithstanding the orders actually passed by the competent authority. No premium can obviously be put on any bonafide mistake. There is ^{further} therefore no force whatever in the contention of the plaintiff that the orders as communicated to him by the A.D.P.H., S.R.D., Belgaum, have been confirmed by Govt. All that Govt. said was that Shri Naik's appeal was rejected, and the orders passed by me specifically direct that his pay should be reduced by Rs. 4/- without specifying any period of time ~~for which~~ during which the reduction concerned operated. It is therefore an appeal against my order that has been rejected by Govt. and not ^{an} ~~the~~ appeal against the orders

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of the A.D.P.H., S.R.L., Belgaum erroneously communicated to Shri Naik.

(c) (ii) The fact that the value of the suit is so small as only Rs.39/- and the cost of defending it perhaps much larger should not act as a bar against the defence of the suit as not defending the same would be against public interest or policy. In this connection I may also point out that the Govt. employee has not obtained permission of the competent authority to file the suit. He asked for such permission which I rejected. Whether the requirements of Govt. Servants Conduct Rules would be satisfied by merely asking for a permission and if on its rejection the Govt. servant can file a suit without offending/ ^{the Govt. Servants Conduct Rules,} will be a matter for decision by Govt. While that may, in any case, be a subject matter for separate action against the Govt. employee, it does not affect the decision of Govt. as regards the defence of the suit.

(c) (iii) The grounds on which the defence may be based are that the original orders passed by a competent authority are to the effect that pay should be reduced by Rs.4. These orders have, in the course of their being transmitted to the party concerned, been wrongly amended so as to include the expression "for a period of one year without effect on his future pay". When this mistake came to light, it was subsequently rectified. There is therefore no question of revision of orders but merely a revised communication of the factual orders.

(d) Copies of the relevant documents are attached

(e) Copies of the relevant correspondence are also attached.

(f) Does not arise.

(g) In the light of the above statement of facts necessary instructions may please be given to the Govt. Pleader at Karwar to file a statement and

conduct defence of the suit. Sanction may also be accorded for the sam

D. Shivalik

Director of Public Health.

Copy w.cs.to:-

1. The Secretary to Govt., L.S. Govt. and Public Health Department, Bombay, l.
2. The Collector of Karwar with reference to his letter No. T.R.A. 7270 dated 23.12.54 to the A.D.P.H. S.R.D., Belgaum.
3. The Asstt. Director, Public Health, S.R.D., Belgaum.
4. The Medical Officer of Health, Kanara West, Karwar.
5. Government Pleader, Karwar.

In the Court of the Civil Judge, S,Dn. Karwar.

O.S, No.183 of 1954.

Manjunath Sannayya Naik aged 50
Vaccinator Karwar.

Plaintiff.

Versus

The State of Bombay.

Defendant.

Claim Rs. 39/- for all purposes.

The plaintiff above-described begs to state as hearunder :-

1. The plaintiff who was and is a Vaccinator in the Defendant's service was served with a Charge-sheet No.V/10564/1951 dated 14/15-9-1951 of the Asstt. Director of Public Health, S.R.D., Belgaum and ultimately the plaintiff was informed by No.V/1866/53, dated 7/9-2-1953 of the A.D.P.H., S.R.D., Belgaum as follows :-

"His pay of Rs. ~~54~~/-57/- is reduced by Rs.4/- for a period of one year without effect on his future pay i.e. his pay after reduction will be Rs.53/- with effect from the date of the order from the D.P.H. in the Govt." This order was received by the plaintiff on 13-5-1953.

3. The plaintiff then tried to approach the Govt. against the order by his appeal dated 13-5-1953. But he was informed by No.V/498/54, dated 16-1-1954 of the A.D.P.H. that the Govt. has considered the matter in deciding the plaintiff's another appeal and had passed the orders in its No.P.H.D.1753-6003-D, dated 27-7-1953 and that therefore it was un-necessary to forward the plaintiff's appeal to the Govt. at all. Other contention apart, this means that the Govt. had, by its aforesaid order dated 27-7-1953 confirmed the order in the said No.V/1866/53, dated 7/9-2-1953.

4. The plaintiff does not admit the correctness or the propriety or the legality etc., of the said order No.V/1866/53, dated 7/9-2-1953 of the A.D.P.H., S.R.D., Belgaum. But in any event what has been done thereafter is simply most illegal.

5. After the said order No.V/1866/53, dated 7/9-2-1953 was once passed and communicated to the plaintiff and further, on appeal confirmed by the Govt. by its No.P.H.D.-1753-6003, dated 27-7-1953, an amendment was made in the order. The prior order by which the plaintiff's pay had been reduced by Rs.4/- for a period of one year without effect on his future pay was amended so as to read the plaintiff's pay had been reduced by Rs.4/- per month "permanently."

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6. It is submitted (without prejudice to other contentions) that when once a final order of punishment is passed and communicated to the defaulter in an enquiry, it is final so far as the officer passing the same is concerned and he becomes functus officio in the matter and cannot himself alter it at all. Further, in this case, the said initial order had been confirmed by the Govt. Under the circumstances, the enhancement of the punishment by an amendment is entirely without jurisdiction and quite illegal.

7. In any event (therefore the plaintiff's pay cannot be reduced for a period of more than one year at all from 6-2-1953 the date of the order of the D.P.H. i.e. the plaintiff is entitled to receive his full pay without any reduction from 6-2-1954.

8. The plaintiff however is being paid his due pay reduced by Rs.4/- per month even after 6-2-1954. Hence, this suit.

9. Due notice dated 6-6-1954 as required by law had been duly served more than two months before this suit. The legal requirements in this behalf have been fully and duly complied with.

10. The causes of action for this suit arose on 6-2-1954 and thereafter.

11. The causes of action for this suit arose at Karwar where the plaintiff earns his pay and is it to be paid but is not paid his due pay. Hence this court has jurisdiction to try and dispose of this suit.

12. The reliefs claimed in this suit have been valued at Rs.39/- only for all purposes.

13. The plaintiff, therefore prays that the Defendant be ordered to pay to the plaintiff Rs.39/- being the arrears of pay legally due to the plaintiff from the Defendant for the months of February to November 1954 (inclusive) and the costs of this suit.

Valued at and total valuation is Rs.39/- for all purposes.

Karwar. 10-12-1954.

Sd/-

Plaintiff.

I, Manjunath Sannayya Naik, the plaintiff in this suit, do hereby declare that the contents of this plaint are true to the best of my knowledge.

Karwar. 10-12-54.

Plaintiff.

Presented on 10-12-54.

Sd/-

Advocate for Plaintiff. 11-12-54.

Memorandum

Subject:-Charges against Shri M.S.Naik, Vaccinator
Karwar Town.

Shri M.S.Naik, Vaccinator Karwar Town is hereby informed that it is brought to the notice of this office that he has been negligent in his duties of vaccination work and that he has disobeyed the orders of his superiors in this connection and that he has tried to make false allegations against his superiors and that he has refused to ~~xxx~~ accept office tapal sent to him through local despatch book. He has therefore been charged as under :-

(1) He has wasted 124,191 and 167 doses of lymph out of 180,200 and 210 doses supplied to him during the periods from 28-5-1949 to 27-8-1949 and from 28-10-1950 to 30-12-50 and 13-6-1951 to 25-7-1951 respectively. In this connection his attention is drawn to the fact that Shri B.R.Naik who was working in Karwar Town during interim period from 26-8-1949 to 10-10-1950 has consumed all the lymph issued to him as can be seen from the table below

<u>Week ending.</u>	<u>Doses.</u>	<u>Pri.</u>	<u>Re.</u>
3-9-1949	15	7	17
10-9-1949	15	12	3
17-9-1949	15	12	3
24-9-1949	15	12	3

etc., etc.,

His attention is also drawn to his letter No.106 of 27-2-1951 in which he has stated that the lymph received by him on 18-1-1951, was consumed by him on 18th, 19th and 20th January, 1951 without the help of the Municipality or anybody. From the above two facts, it is clear that the wastage of lymph caused by him during the above mentioned periods has been done by his negligence towards duty.

He is therefore directed to show cause why the cost of wastage of lymph should not be recovered from him.

(2) The contents of the letter No.V/15616 dated 27/28th December, 1950 were communicated to him by the Medical Officer of Health, Kanara West, Karwar under his No.112, dated 10-1-1951 and he was ~~ask~~ asked to supply the required explanation within a week on the receipt of the letter by him. He was also reminded in this connection by the Medical Officer of Health, Kanara West, Karwar, on 14-2-1951 and still he has failed to submit his explanation.

(3) He was directed by the Medical Officer of Health, Kanara West, Karwar under his No.26(1)/696 of 23-2-1951, to submit daily reports of his work in a particular manner and form and this letter was sent to him by Registered post. He has not submitted such reports to the Medical Officer of Health, Kanara West Karwar.

(4) The contents of this office letter No.V/2946 of 8-3-1951 were communicated to him by the Medical Officer of Health, Kanara West, Karwar under his No.28(1)1094 of 27-3-1951 and he was asked to send a reply before 31-3-1951, positively, which he has failed to do.

(5) He was asked by the Medical Officer of Health Kanara West, Karwar in June 1951 to send the Vaccination certificate of the son of Dr. V.L.Suryavanshi but he has not complied with the orders of the Medical Officer of Health in this respect.

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The above four instances go to show that he has failed to submit his explanations inspite of specific instructions and thus he has deliberately disobeyed the order of his superior officer. He should show the cause why disciplinary action should not be taken against him.

(6) He has made allegations against the Medical Officer of Health, Kanara West, Karwar, in his No.87 dated 17-12-1951, stating that he is being treated against rules and he was asked to point out specific instances of such acts as well as the rules concerned by the Medical Officer of Health, Kanara West, Karwar under instructions from this office under No. V/2946 dated 8-3-1951. Instead of replying at issue he has stated in his No.154 of 2-4-1951, that the Medical Officer of Health, Kanara West, Karwar, has issued the orders which are not based on the matters of fact and which is highly objectionable and contrary to discipline.

He should show cause why severe disciplinary action should not be taken against him for such a behavior against his superior officer.

(7) He has refused to take delivery of office post sent to him on 18-2-1951, by the Sanitary Inspector, Karwar Division with his peon by local despatch book. He has also instructed his peon not to receive any post on his behalf.

(8) On 31-3-1951, a peon from the Office of the Medical Officer of Health, Kanara West, Karwar came to him with some office post but as he was not at home the office peon asked his peon to accept the post, which was not accepted. Therefore the office peon again came to him with the post on 1-4-1951 at about 7-0 A.M. and he too refused to take delivery of the same saying "I do not accept letters on Sunday".

From the above two instances, it is clear that he has not only insulted his superior officers by not accepting office post but he has caused unnecessary delay in Govt. work. He should therefore show cause why action deemed fit should not be taken against him.

(9) Some temporary Vaccination centres were fixed by the Medical Officer of Health, Kanara West, Karwar, to facilitate Vaccination work and he was asked to attend these stations punctually and regularly. But on some occasions, he has failed to attend the required Vaccination centres and made the parents of the children to wait unnecessarily and thus caused inconvenience to the Public.

He should state why disciplinary action should not be taken against him for negligence of duty.

The above nine charges are framed against him as per rule No.55 of the Bombay Civil Services, Conduct, Discipline and Appeal rules and he is asked to submit his written statement in defence within 15 days of the receipt of this charge sheet. While submitting ~~his~~ his statements he should also mention whether he desires to be heard in person. Copies of relevant correspondence together with their translation in Kannad will be supplied to him by the Medical Officer of Health, Kanara West, Karwar.

Sd/-

Asstt. Director of Public Health, S.R.D.

Through and with compliments :-

The Medical Officer of Health, Kanara West, Karwar with a request to forward the charge sheet to the Vaccinator together with true translation of the same in Kannad and also furnish him with the copies of all relevant papers duly translated in Kannad, if they are in English under intimation to this office. Spare copies of all the correspondence and charge sheet to be supplied to the Vaccinator, should be supplied to this office.

Sd/- A.D.P.H., S.R.D.

Letter.

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No.V/10289 of 1952.
Belgaum, 23rd Sept 1952.

To

The Director of Public Health
for the Govt.of Bombay,Poona.

Sub:-Shri M.S.Naik,Vaccinator,Karwar town.
Enquiry against.

The 9 different charges framed by this office were communicated to Shri M.S.Naik,Vaccr.,Karwar Town, under No.26(ii) 3060 dt.15.10.51,by the M.O.H.,Kanara West Division,Karwar and the Vaccinator was asked to submit his explanation within 15 days time from the receipt of the charges by him.

The Asstt.Director,Public Health,S.R.D.,Belgaum camped at Karwar from 21.3.52 to 25.3.1952 and examined the following witnesses in ~~the~~ connection with the oral enquiry against Shri M.S.Naik,Vaccinator:-

- 1.Dr.D.S.Kumta,Private Medl.~~Officer~~ Practitioner,Karwar.
- 2.Shri P.V.Chandavarkar,Chief Officer,Karwar Municipality
- 3.Shri Malappa Narayan Molsekar,Mukadam Karwar Municipality
- 4.Shri Vasant Krishna Joshi,P.S.I Local Intelligence Branch,Karwar.
- 5.Shri Shiva Sheshu M~~olsekar~~,Majdoor.
- 6.Shri Rama Bandekar,peon in the office of the Medical Officer of Health,Karwar.
- 7.Shri Bommayya Channayya Madiwal,peon under the Sanitary Inspector,Karwar.
- 8.Shri Ruzar Manwel Gudinh,peon under the Vaccinator, Karwar town.
- 9.Shri M.R.Kadam Naik,Vaccinator Karwar S.D.
- 10.Shrimati Jankibai Mahableshwar Naik,Kaju Bag, (Karwar taluka)
- 11.Shrimati ~~Ramabai Pandurang~~ Tarabai Ghanshyam Hegde, Kaju Bag (taluka Karwar)
- 12.Shrimati Ramabai Pandurang Hegde,Kaju Bag (Tal.Karwar).
- 13.Shrimati Gerty D'Mello,Karwar.
- 14.Dr.M.R.Dhamdhare,Medl.Officer of Health,Karwar.
- 15.Shri M.S.Naik,Vaccinator,Karwar town.
- 16.Shri Ganpatrao Raghoba Kalgatkar,Kodibag.
- 17.Shri Ruzar Manwel Gudinh,peon under the vaccinator Karwar town (a second time on 25.3.1952).

Statements recorded are enclosed:-

The documents exhibited in the enquiry are as follows and they are appended hereto.

Exhibit No.1) (a) Application of 5.10.51 from Shiva Sheshu Malsekar,Mazdoor to Chief Officer,Muny.Karwar.

(b) Application dated 8.10.51 from Shiva Sheshu Malsekar,mazdoor to Chief Officer,Muny.Karwar.

(c) Letter No.605 of 15.10.51 from the President, Muny.,Karwar,to the Collector of Karwar.

(d) Application of 15.10.51 from Shiva Sheshu mazdoor to the Chief Officer,Muny.Karwar.

(e) Application of 20.10.51 -do-

(f) Letter No.1162 of 3.2.52 from the Chief Officer, Muny.Karwar to the Medl.Officer of Health,Karwar.

g) Letter No.V/2610 of 6/7-3-52 from the A.D.P.H. S.R.D.,Belgaum,to the M.O.H.,Karwar.

Ex.No.2.- Letter No.1009 of 23.2.51 from the President,Karwar municipality to the M.O.H.,Karwar.

Ex.No.3.- A public notice dt.21.10.37 appearing in the Puravani Vichari issued by the Chief Officer, Karwar Muny.

Ex.No.4.- Memo No.26(1)2179 dt.20.6.51 from the M.O.H. Karwar to the Vaccinator, Karwar town.

Ex.No.5.- Memo No.3035 of 8.10.51 -do-

Ex.No.6.- Baki Book.

Ex.No.7.- Report of Rama Bandekar, peon in the Office of the M.O.H., Karwar (regarding non-acceptance of the tapal by the vaccinator, Karwar town dt.1.4.51)

Ex.No.8.- Report dt.18.2.51 from Bommayya Channa Madiwal, peon under the Sanitary Inspector, Karwar.

Ex.No.9.- Explanation dt.22.10.51 from Ruzer Manwel Gudino, peon under the vaccinator, Karwar town.

Ex.No.10.- Report dt.26.9.51 from Ruzer Manwel Gudino, peon under the vaccinator, Karwar town.

Ex.No.11. Report of 10.10.50 from -do-

Ex.No.12. Report dated 10.6.51 from -do-

Ex.No.13. Report dt.14.1.52 from -do-

Ex.No.14.- Report dt.21.10.50 from -do-

Ex.No.15.- Office Order No.4146 of 31.10.50 from the M.O.H. to the Vaccinator, Karwar town.

Ex.No.16.- Letter No.2196 dt.8.8.50 from the M.O.H., Karwar, to the President, Karwar municipality.

Ex.No.17.- Letter No.14617 of 4.12.50 from the A.D.P.H., S.R.D., Belgaum to the M.O.H., Karwar.

Ex.No.18.- Memo No.4765 of 27.12.50 from the M.O.H., Karwar to the vaccinator, Karwar town.

Ex.No.19.- A list of vaccination centres in Karwar town (with dates) not attended by the vaccinator.

Ex.No.20.- Receipt No.50 of 8.3.52 for Rs.2-8-0 issued to Besal Brito.

Ex.No.21.- Memo No.V/2314 of 19.2.51 from the A.D.P.H., S.R.D., Belgaum, to Shri M.S.Naik, through the M.O.H. Karwar.

Ex.No.22.- Receipt dt.3.3.52 issued to Shri Ganappa Raghoba.

Ex.No.23.- Memo No.4285 of 14.11.50 from the M.O.H. Karwar to the vaccinator, Karwar town.

Ex.24.- Report No.272 of 1.11.50 to the President, Karwar municipality through the M.O.H., Karwar.

Ex.No.25.- Memo No.4735 of 21.12.50 from the M.O.H., Karwar to the vaccinator, Karwar town.

Ex.No.26.- Letter No.882 of 29.10.51 from the Muny., Karwar to the M.O.H., Karwar.

Ex.No.27.- Memo No.505 of 7.2.51 from the M.O.H., Karwar to the Vaccinator, Karwar.

Ex.No.28.- Report No.72 of 9.2.52 from the Vaccinator, Karwar to the M.O.H., Karwar.

Ex.No.29.- Report No.106 of 27.2.51 from the vaccinator, Karwar town to the M.O.H. Karwar.

Ex.No.30.- Report No.7 of 8.1.51 from the vaccinator, Karwar town to the M.O.H., Karwar.

Ex.No.31.- Report No.14 of 13.1.51 from -do-

Ex.No.32.- Report No.154 of 2.4.51 from -do-

Ex.No.33.- Report No.154 of 17.2.51 from the vaccinator, Karwar town to the A.D.P.H., S.R.D. Belgaum.

Ex.No.34.- Memo No.28(1)1094 dt:27.3.51 from the M.O.H., Karwar to the vaccinator, Karwar.

Ex.No.35.- ~~XXXXXX~~ Memo No.26(1)886 of 23.2.51 from the vaccinator, Karwar town to the M.O.H., Karwar.

Ex.No.36.- Memo No.1605 of 27.4.51 from the M.O.H. Karwar to the vaccinator, Karwar town.

Ex.No.37.- Application dt.26.9.51 from Shri K.P.Naik, peon under the Malaria Supervisor, Karwar.

Ex.No.38.- A list of papers and records produced by Shri M.S.Naik, vaccinator, Karwar town.

Judgment.

Charge No.1.- As regards the charge No.1 about the wastage of 482 doses of lymph, the contention of the vaccinator is that as per vaccination rules his duties are limited to the extent of vaccinating those children that are only brought to the centres on fixed days and time and the collection of such children is the sole responsibility of the municipality since the compulsory vaccination Act has been applied to Karwar town. With the above presumption, he believes that he is not responsible for the wastage. In accordance with the Act, the municipality has to help the vaccinator by giving him certain facilities in collecting children at Centres. This does not mean that he is absolved of his main duties of vaccinating the required number of children in proportion to population of the place in his charge. His duties under the Act are to perform the vaccination of all the children in the town by persuasion. With this objection in view, he should not have left any stone unturned. The compulsory vaccination Act is enforced merely to strengthen the hands of the vaccinator in enabling him to get the children easily for vaccination and not for shirking his responsibility towards the public. But the vaccinator deliberately misconstrued the interpretation of the rules and refrained from executing the required work.

The Dist. Health Officers and the Medl. Officers of Health are in charge of the public health activities in their respective districts and they control and guide all the subordinate staff. Naturally the vaccinator was duty bound to carry out the orders of the M.O.H., Karwar. Failure to carry out his orders amounts to inefficiency, negligence or disobedience. The Vaccr. states that wastage of lymph is neither due to his inefficiency nor due to his negligence; but to his non-compliance in executing the orders of M.O.H., since he thought that they are issued against the meaning of Act. Assuming that the M.O.H. had issued the orders against the Act, it was the main duty of the vaccinator to carry out the orders first, if he liked under protest and then to appeal to the superior authorities. Instead of ~~following~~ following the proper course, ~~he~~ he complained against the M.O.H. to the A.D.P.H., S.R.D. directly. The A.D.P.H. instructed him to act up to the orders of the M.O.H. The Vaccinator had the audacity to flout the instructions of the A.D.P.H., even, and carried on fruitless

27/27

correspondence full of arrogance. It was pointed out to the Vaccinator that the candidate vaccinator worked satisfactorily in the same circumstances in which he had to work. But this he attributed to the servile mentality of the candidate vaccinator to obey the illegal orders.

I therefore consider that the vaccinator is responsible for the wastage of the lymph due to his defiant and insubordinate attitude and therefore hold him guilty of the charge.

Charge No. II. As regards charge II to the effect of not replying to this office No. V/15616 of 27/28-12-50 communicated to him under the M.O.H.'s No. 112 of 10.1.51 in spite of a reminder from the M.O.H. on 14.2.51, his explanation is that he had replied a similar reference earlier, is not tenable. It may be that he might have replied some past reference to the D.H.O., Belgaum, but that does not mean that a reply to the above letter was unnecessary. It is simply an excuse for avoiding the reply. It was his duty to send the reply to the M.O.H., in time or at least to acknowledge his letter. When reminded he should have admitted his mistake and apologised to the M.O.H. for his non-compliance.

I therefore consider it an act of wanton disobedience of the orders of the M.O.H. and therefore hold him guilty of the charge.

Charge No. III. The charge runs thus:- He was directed by the M.O.H., Kanara West, Karwar under his No. 26(1)/896 of 23.2.51 to submit daily reports of his work in a particular manner on the prescribed form. The Vaccr. did not submit the required information daily to the M.O.H.

The vaccinator says that he received the register on 26.2.51 and submitted the information on the same day under his No. 104 dt. 26.2.51. The M.O.H. admits of its acknowledgement but contends that the vaccinator failed to submit information on subsequent days as was intended by him.

As seen from the Kannad translation, the instructions in the memo were not clear as to whether the required information was to be supplied on the particular date or even thereafter. The M.O.H. (according to his draft in English) might have intended to receive the information daily; but the wordings of the memo received by the vaccinator were not explanatory enough and probably the vaccinator took its advantage.

I therefore consider that the evidence in this case is inadequate to prove the charge against the Vaccr.

Charge No. IV. The 4th charge is that the contents of this office letter No. V/2946 of 8.3.51 (viz. asking the vaccinator to point out specific instances in which the ~~vaccinator~~ actions of the M.O.H. are against the Act as complained by him) communicated by the M.O.H. to the Vaccr. under his No. 28(1) 1094 of 27.3.51 and was instructed to submit his reply before 31.3.51 without fail which he did not do.

The particular reference has been replied on 2.4.51 and that too absolutely beside the point. He did not give any proof for supporting his statement as per his letter No. 87 of 17.2.51 and thus has failed in proving his statement. His actions in this instance cannot be lightly ignored since the motive with which it is alleged is a proof of his mischievous tendencies. A man is responsible not for his acts in themselves but his acts coupled with a crooked mind with which he does them. Instead of pointing out submissively the inconsistency in the writings of the M.O.H., he assumed the air of a superior officer and demands from the M.O.H. the original correspondence by writing irrelevant and arrogant letters.

24/5/51

Before inflicting punishment on a person one must be satisfied with the two things; first that an act has been done which by reason of its harmful tendencies or results is fit to be repressed by way of penal discipline and secondly that the penal attitude of the doer towards his deed was such as to render punishment effective as a deterrent for the future and therefore just.

I consider that both things exist in the present case viz., that the act is motivated by and done with harmful tendencies and secondly is of the criminal nature which would only be curbed by suitable punishment. I hold him, therefore, guilty of the charge.

Charge No.V. The 5th charge is to the effect that the vaccr:did not submit a vaccination certificate of the son of Shri V.L.Suryavanshi even though the M.O.H.ordered him to do so under his No.1605 dt.27.4.51. The vaccinator should have carried out the orders of the M.O.H. But instead of supplying the extract he made a back reference to the M.O.H.on 14.5.51 enquiring of the payment of fees for the certificate to which the M.O.H. replied that he was not eligible for the same.

Inspite of the clarification, the vaccinator persisted in refusing the certificate and had the audacity to ask the M.O.H. for supplying him with the original correspondence of Shri V.L.Suryavanshi. The M.O.H. refused to send it and asked the vaccinator to go and see it in the office. When he went in the office of the M.O.H. he was shown the correspondence But as it was in English he could not follow it and under that pretext he intentionally postponed the submission of the certificate.

As discussed above in respect of charge IV, I consider that the vaccinator has done the act purposely with a view to lower the prestige of the M.O.H.in the public eye.

I feel that such a mischievous mentality in a Govt. servant must be repressed and therefore hold him guilty of indiscipline and disobedience of the orders of his superior.

Charge VI.- The matter has been fully dealt with in paras under charge IV and comments thereon need not be reiterated.

Charge No.VII.- The charge is that the vaccinator refused to receive the delivery of office post which was sent to him by the Sanitary Inspector, Karwar Division, with his peon by local despatch book on 18.2.51 and also he instructed his peon not to accept any post from the Sanitary Inspector or the M.O.H. for him.

The peon of the sanitary Inspector in his statement Ex.No.8 states that he had taken the tapal to the vaccinator at his house which was refused by him on the plea that that day was Sunday. The peon in his oral statement before me also corroborated the fact. The vaccinator was allowed the opportunity to cross-examine the witnesses; but he did not avail himself of it. He merely disowns the fact ~~the fact~~ in his own explanation.

The latter part of the charge viz., that the vaccinator instructed his peon not to receive tapal either from the M.O.H. or from the Sanitary Inspector has also been true from the oral statement of the peon Ruzer Manwel Gudino, before me.....

before me on 25-3-1952. He also submitted that the statement dated 22-10-1951 he sent through the Vaccinator was false and that it was forced on him by the Vaccinator under threats. In his oral statement the peon admits that he had instructions from the Vaccinator not to accept such tapals. The peon affirmed the facts when he was cross-examined by the Vaccinator.

I therefore hold that the Vaccinator is guilty of both the parts of the charge.

Charge No. VIII:- This charge is to the effect that an office tapal was taken by Rama Bandekar, peon in the office of the Medical Officer of Health for delivery to the Vaccinator on the evening of 31-3-1951, when the Vaccinator was not in his house. Therefore he asked his peon to accept it; but the peon refused it on the ground that he had instructions from the Vaccinator not to accept it. The peon of the Medical Officer of Health, ~~xxx~~ took the tapal next day morning to the Vaccinator who refused to accept it on the excuse that that was Sunday. The Medical Officer's peon has given the statement to the Medical Officer of Health to that effect ~~that was Sunday~~ ~~The next~~ and the facts in it have been affirmed by him in his oral statement on 22-3-1952. In the cross examination by the Vaccinator the peon asserted his own previous statement. The Vaccinator did not admit the charge. In order to retaliate the Medical Officer of Health, the Vaccinator has intentionally refused the tapals sent to him on 1-4-1951 and therefore I hold him guilty for the insubordination.

Charge No IX :- The charge is that the Vaccinator did not attend the temporarily fixed vaccination stations on 22nd and 23rd January, 1951, which has caused inconvenience to parents of children who had to wait long at the centres and return without the children being vaccinated. The explanation of the vaccinator is not satisfactory in this matter. But he in Exh. 29 only contends that the 15 doses of lymph received by him on 18-1-1951 were consumed on 18, 19 and 20-1-1951 and that he had no stock of lymph left for use on 22nd and 23rd January 1951.

The witnesses viz. (1) Jankibai Mahabaleshwar Naik (2) Tarabai Ghanshyam Hegde (3) Ramabai Pandurang Hegde, have given statements that they had taken their children to the vaccination centres at the instance of the Municipal servant but returned home after waiting long time as the Vaccinator was absent.

It was the duty of the vaccinator to keep sufficient stock of lymph on hand for the use at the centre. In case he had not the stock he should have informed the Medical Officer of Health and through him to the Municipality of the shortage to avoid the inconvenience to the parents of the children. But he did not take any action and remained absent from work without any intimation. This attitude on the part of the vaccinator shows his carelessness towards the public for which he deserves to be blamed.

I therefore hold him guilty of the charge. Above all whenever the Vaccinator was called upon to reply any reference he never replied in a straight forward manner but has always taken the opportunities to use verifying and vetuperative language against his superior officer and insulted him:-

<u>S.No.</u>	<u>Charge</u>	<u>To Summarise.</u>	<u>Judgement.</u>	<u>Punishment.</u>
1.	Wastage of 482 doses of lymph		Responsible for the wastage.	33
2.	Replying to a reference within a definite period.		Held guilty of evading the reply.	
3.	Failure to submit information continuously.		Held not guilty as the language of the order is different from the intended one.	
4.	Explanation called for within a definite period.		Held that reply was evaded by using dilatory tactics.	
5.	Supplying of vaccination certificate of Dr. V.L. Suryavanshi.		Held guilty.	
6.	Explanation called for pointing out definite actions of the Medical Officer of Health, that were against rules.		Found guilty of evading a definite reply.	
7.	Refusal to take delivery of the S.I.'s tapal on Sunday. 18-12-1951.		Held guilty.	
8.	Refusal to take delivery of the office tapal on Sunday 1-4-1951.		Held guilty.	
9.	Non-attendance of vaccination station on 22nd and 23rd January, 1951.		Found guilty.	

Please vide concluding para for punishment.

Of the 9 charges framed against the Vaccinator he has been found to be guilty of wanton disregard, towards his duties and disrespect of the orders of the superiors and non-realisation of his responsibility as a public servant having gone blind due to malice, hatred, disregard and disrespect towards those with whomsoever he came in contact in the discharge of his official duties, whether he be a peon, a Municipal Mukadam, a clerk, a S.I., a Chief Officer, or Medical Officer of Health or an Asstt. Director of Public Health and even members of Public.

I have observed him closely during the period of the oral enquiry and I am convinced that all these actions of his are not merely prompted due to his carelessness but due to the wanton, mischievous and harmful tendencies to harass and offend others. He has certainly brought discredit to the Deptt. by exposing the children to the dangerous disease like smallpox through his egoism and obstinacy.

During the course of the oral enquiries I have come across some irregularities of the Vaccinator for which the Vaccinator has been charge sheeted separately. I therefore restrict myself only to those charges to which he was given opportunity to defend himself and recommend that his pay should be reduced to Rs. 45/- which is an initial pay for a Vaccinator for a period of one year, without effect on future increments and the cost of doses i.e. doses 482 at As. 2/- per dose, may be recovered from him.

Sd/-
Asstt. Director of Public Health.

Memo:-

A copy of the enquiry officer's report in connection with enquiry against Shri M.S.Naik, Vaccinator, Karwar town is enclosed. The undersigned agrees with the enquiry officer in his findings that all the charges except charge No.3 are proved against Shri Naik. The undersigned also agrees to the recommendation of the enquiry officer and has come to the provisional conclusion that the pay of Shri M.S.Naik should be reduced to Rs.45/- the minimum of the payscale of vaccinator for a period of one year without effect on future increments and the cost of lymph (482 doses at 2 annas a dose) recovered from him.

2. It is not open to Shri Naik at this stage to enter into discussion regarding the findings of the enquiry officer as to the charges proved against him. He is directed to show cause, if any in writing within a fortnight of receipt of this Memo: why the proposed punishment should not be awarded to him.

Sd/-V.V.Nerurkar.

For Director, Public Health.

To

Shri M.S.Naik,
Vaccinator Karwar Town(under suspension).

Through- The Asstt. Director of Public Health, S.R.D.Belgaum.

Copy w.cs.to:- The Asstt. Director of Public Health, S.R.D..
Belgaum.

2. He will attach a Kannada translation of this ~~letter~~ order as well as of his enquiry report along with English copies before despatch to Vaccinator.

The Medical Officer of Health, Kanara West,
Karwar.

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Letter. No.S-6-3066-A of 1953.
Poona, 1. 6th February 1953

To:-

The Asstt. Director of Public Health,
S.R.D.Belgaum.

Subject:- Shri M.S.Naik-Vaccinator Karwar town-
(under suspension) Enquiry against

Reference ybur letter No.V/991, dated 22-1-1953.

2. As Shri M.S. Naik Vaccinator, Karwar Town has pleaded for mercy his pay should be reduced by Rs.4/-p.m only.

3. In your order to Shri Naik to the above effect the present pay of Shri Naik and also his pay after reduction should be mentioned.

4. A copy of your order should please be furnished to me.

Sd/- V.V.N.
For Director, Public Health.

Public Health Department.

No.V/1866 of 1953. 34 24
Belgaum 7th/9th February 1953.

Memo:-

Subject:- Shri M.S.Naik, Vaccinator Karwar,
Town (under suspension, Enquiry against-

With reference to his application dated 1-12-1952 addressed to the Director of Public Health for the Govt. of Bombay, Poona in which he has asked for mercy, the Director of Public Health for the Govt. of Bombay, Poona has been pleased to issue the following order through this letter No. S-6-3066-A dated 6-2-1953:-

1) His pay of Rs. 57/- is reduced by Rs. 4/- (for a period) pay after reduction will be Rs.53/- with effect from the date of order from the Director of Public Health for the Government of Bombay, Poona.

Sd/- xxx
Asstt Director of Public Health,
S.R.D. ~~Rukma~~

To

Shri M.S.Naik, Vaccinator, Karwar Town (under suspension)
Through:- The Medical Officer of Health, Kanara West Dn.
Karwar.

C.W.Cs.to:-

The Medical Officer, Health, Kanara West Dn. Karwar,
with a request to send the Memo. in question to Shri M.S.
Naik with translation in Kannad.

The Director of Public Health for the Govt. of
Bombay, Poona.

/ of one year
without effect
on his future
pay i.e. his

Letter.

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No. V/3602 of 1953.
Belgaum 4th November 1953.

To

The Medical Officer of Health,
Kanara West Division, Karwar.

Subject:- Shri M.S.Naik Vaccinator- Enquiry against-

Reference this office Memo.No.V/1866 dated 9-2-1953
addressed to Shri M.S.Naik, Vaccinator Karwar Town through
you.

2. It is seen that the letter No.S-6- 3066-A dated
6-2-1953, from the Director of Public Health for the Govt.
of Bombay, Poona was misunderstood and that the specific
period of reduction shown in the Memo under reference was
incorrect. It is now intimated by the Director of Public Health
under his letter No.S-6-A dated 27-10-1953 that the pay of
Shri Naik has been permanently reduced by Rs. 4/- . The
following correction should therefore please be made in the
sub para (1) of this office Memo.No.V/1866 of 9-2-1953:-

For the words "for a period of one year without
effect on his future pay" substitute the word "Permanently

3. The ~~am~~ correction should please be intimated to Shri
M.S.Naik, duly translating it in Kannad.

4. Action, taken should please be intimated to this office.

Sd/- xxx
Asstt. Director of Public Health,
S.R.D.

Public Health Department.

No.V/498 of 1954.
Belgaum, 16th Jan. 1954.

Memo:-

With reference to his appeal application dated 13-5-1953 to Govt. received through the Medical Officer of Health, Kanara West Dn.Karwar under his No.3724 of 1-11-1953, Shri M.S.Naik, Vaccinator, Karwar Town, is informed that it is seen that the appeal application in question pertains to his first departmental enquiry when nine charges were framed against him. While forwarding his appeal application dated 29-4-1953 to Govt. the Director of Public Health, Poona, has forwarded copies of both the charges sheets along with his remarks. Agreeing with the remarks of the Director of Public Health, Poona the Govt. were pleased to issue orders under their No. PHD-1753-6003-D of 27-7-1953. The same has been communicated to him by the Medical Officer of Health, Karwar under his No.2837 of 6-8-1953. In view of this, it is not considered necessary to forward his appeal dated 13-5-1953 received from the Medical Officer of Health, Karwar.

Sd/ A.K.Niyogi
Asstt. Director of Public Health,
S.R.D.

To

Shri M.S.Naik, Vaccinator, Karwar Town

Through and w.cs.to:- The Medical Officer of Health, Kanara W.D.Karwar with a request to furnish a translation of the Memo. to the vaccinator.

65 45
Copy of Govt. letter, L.S.G. and P.H.D., No. PHD.1753/6003/D, dated 27th July 1953., addressed to the Director of Public Health, Poona.

Subject:- Representation of Shri M.S.Naik.
Vaccinator, Karwar Town.

Reference your letter, No. S-6-17750-A, dated the 25th June 1953, on the subject mentioned above.

2. Government agrees in your remarks that Shri Nail appeal needs no reconsideration. He may be informed accordingly.



From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

Subject: Statement of return of civil suits for the month of December 1954.

No. 28 of 1955. Karwar, dated 8-1-1955.

Sir,

I have the honour to state that one Manjanath Sannayya Naik Vaccinator of Karwar has filed a suit No. 183-1954 on 10-12-54 in the Court of the Civil Judge, S.Dn., Karwar against the State of Bombay. The suit summons was served on the Collector on 23rd December 1954. The Collector has authorised me to appear on behalf of the State. The suit is fixed for return of summons on 21-1-1955. On that I will put-in my appearance and apply for time.

Yours faithfully,

10/19
11/1/55

D.G.P. Kanara.

Submitted for information

no 736/E of 11.1.55
The DG P is requested under the
office memo. to apply in an adjournment.

Pl. keep for next
distribution

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301. (111) 6

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From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.



No. 45 of 1955. Karwar dated 14-1-55

Sir,

CS No. 183 of 54

With reference to your letter No. 736/E dated 11th instant, I have the honour to inform you that the suit summons had been received on 21-12-1954 to appear within 30 days. Hence I will put-in my appearance on 21-1-1955, ~~But this is looked upon~~ and apply for time. But this is looked upon by the Court as a second adjournment. As already pointed out in other suits the Court grants time of only about 2 weeks on the second occasion and of one week on the third occasion. No further adjournments are given. I will intimate the next date on 21st instant. It is not possible to obtain 2 months time in the present Court.

SECRETARY TO GOVERNMENT,
LEGAL DEPARTMENT.
2076
20/1/55
E

Yours faithfully,

Submitted

msg case msg
acc kept for next destination

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Sol (msg). ver
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5/3/54

Kannara Civil Suit No. 183/54

The plaintiff Shri M.S. Naik has filed this suit against the State of Bombay^A to recover Rs. 39/- being the arrears of his pay from the month of February to November 1954.^A

- 2. The suit is defensible.
- 3. Defence of the same may be sanctioned on the lines of the accompanying brief.

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hsp/25/3

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^x
Sd/-y. L. S. G. & P. H. D.
(M)
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Seen over R. D

Sd/-y
J. Seng 2 D
(M) 28/2
B
28/2

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No. 4616/5

Office of the
Remembrancer of Legal Affairs,
Bombay Castle. 1.3.1955.

Subject: *Kanara* Civil
Suit No. 183 of 1954.

MEMORANDUM.

The District Government Pleader, *Karwar*
is informed that the defence of the suit noted above
is sanctioned on the lines of the accompanying brief.

21/5/55/ Papers of the case in *one* File
D.P. H. Pomeroy
received from the ~~Collector~~ accompany.

Stop

MUC

OK for Remembrancer of Legal Affairs.

To

The District Government Pleader. *Karwar*

H. W. Sone
ONG
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Issued 1/3

G. R. to press under no 16033/E

Date 23-7-55

Submitted

25 Film S Kanara 1st (new)

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suplt. or 30/11

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

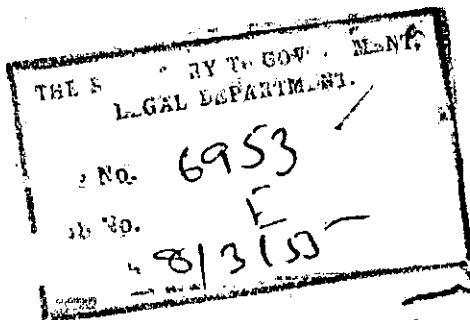
No. 187 of 1955. Karwar, dated

Sir,

Today was the last day for filing the W.S. in O.S.No.183-1954 filed by Manjanath Sannayya Naik against the State of Bombay. The W.S. has been put-in today and its copy has been sent herewith. If any amendment in the W.S. is necessary the necessary suggestions may be made soon.

Yours faithfully,

Dist.Govt.Pl.Kanara.



F.01

Al see the accompanying
Copy of the Wt filed in
the Court. It has raised
all points. But it is verbose
to suggest any amendment to it
is impossible. It may be
approved

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Sol and
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In the Court of the Civil Judge, Senior Division, Karwar.

O.S.No.183-1954.

Manjanath Sannayya Naik ... Plff.

Vs.

The State of Bombay Defendant.

Written Statement put-in by the Defendant.

1. In the notice issued by the plff under sec.80 C.P.Code he asserted that he was going to sue the Govt. for the difference in pay at the rate of Rs.4/- per month for the "past period" from 6-2-1954 onwards, and that he was entitled to receive at the rate of Rs.105/- in all per month "in future" as also the usual increment (vide para 22 of the notice). In para 23 the plff claimed only Rs.11/- as due to him for the months of February, March and April 1954. The cause of action for each month's pay arises after the expiry of the month. The plff had not given notice for the ^{deduction} arrears of pay arising in June to November 1954. His claim for these arrears is therefore not tenable for want of proper notice under section 80 of the C.P.Code.

2. This suit is barred under sec.4 read with section 6 of the Pensions Act. This suit relates to grant of money by Government. Section 6 does not authorise the Court to make any order where the liability of the Government regarding such grant of money is affected. The suit for arrears of pay is therefore not maintainable.

3. In the original notice dated 6-6-54 the plff claimed that the amendment made to the punishment order making the reduction of his pay by Rs. 4/- per month permanently or extending the said reduction beyond 5-2-1954 should be set -aside and cancelled. No such relief has been asked for in the present suit. Unless specific relief is asked for to get the order in question set-aside as illegal or ultravires the relief now claimed for the refund of

the alleged illegally recovered excess amount is not maintainable. So long as the order stands, this relief cannot be granted. It was therefore necessary for the plaintiff to ask for a declaration that the order under which the recovery process has been executed was illegal and should have asked for the relief that it should be set-aside. But as this relief has been dropped in the present suit it is not maintainable in the present form.

4. Mere assertion in the plaint that the recovery had been made under an illegal order passed without jurisdiction will not entitle the plaintiff to claim the relief now sought. So long as the order is not set-aside the recovery is legal. Until the order is declared illegal there is no right to claim a refund. Therefore the present suit is not maintainable.

5. The order in question was admittedly passed on 6-2-1953. The plff has filed this suit on 10-12-1954. His right to challenge the legality of the order was time-barred under Article 14 of the Indian Limitation Act. The plff cannot therefore claim the arrears of pay from the months of February to November 1954. The deduction of Rs.4/- made in the plff's pay per month from February to November 1954 was legal and valid.

6. The plff's suit is barred by sec.9 of the C.P.Code. The order passed by the Director of Public Health was an administrative order and this Court has no jurisdiction to grant any relief unless that order is found to be ultravires. The plff has no right to sue for the arrears of pay until the order is declared illegal.

7. The plff suggests in plaint paras Nos. 1 and 2 that the order reducing his pay by Rs.4/- per month for one year only was passed by the Director of Public Health. This suggestion is not correct. It was a fact that plff was working at Karwar and a charge-sheet had been framed against him and an enquiry had been held by the Assistant Director of Public Health, S.R.D. Belgaum. He furnished his report of enquiry to the Director of

59 59

Public Health in his letter No.V/10289 dated 23-9-52. On this report, the D.P.H. passed his order No.8 6/27421 /A of 1952 dated 25-10-1952. Therein he agreed with the enquiry officer in his finding that all the charges except charge No.3 were proved against the plaintiff. He came to the provisional conclusion that the pay of the plaintiff should be reduced to Rs.45/- per month which was the minimum of the pay scale of a Vaccinator for a period of 1 year without effect on future increment and that the cost of the lymph should be recovered from the plff. This was not the final order. The plff was served with a copy of the enquiry officer's report and he was directed to show-cause in writing within a fortnight as to why the proposed punishment should not be awarded to him. The plff was ^{at} that time drawing a pay of Rs.57/- per month. The plff pleaded for mercy. Therefore the Director of Health revised his provisional order and directed that plff's pay should be reduced by Rs.4/- per month. This meant that the reduction was permanent. The order did not mention that the reduction was restricted only to one year. It is this order which is being executed. The plff has not relied upon the provisional order dated 25-10-52 as he knows well that it could be revised and that it was not final. It is the final order passed by the D.P. H. on 6-2-1953 which has been challenged in this suit. It is against this order that plff had appealed to the Government and it is this order which was before the Government with which the Government refused to interfere.

8. It appears that the Assistant Director of Public Health Belgaum misinterpreted this order, and informed the plff that his pay of Rs.57/- had been reduced by Rs.4/- for a period of one year only. But this interpretation was unauthorised. It is not the A.D.P.H. who had ordered the reduction of the pay

the plaintiff. He had only communicated the order passed by the D.P.H. This is clear from the wording of letter No.V/1866 /53 dated 7/9-2-1953. He had clearly referred to in this letter that he was communicating the order passed by the D.P.H. on 6-2-1953. He has even quoted the number of the letter of the D.P.H. The fact that this reduction was restricted to a period of one year only has not been mentioned in the original order passed by the Director of the Public Health. Therefore what was communicated to the Plaintiff on 9-2-1953 by the Assistant Director under a wrong impression or interpretation of the initial order cannot entitle the plaintiff to claim the relief now sought. What was communicated to the plff on 9-2-1953 as quoted in plaint para No.1 was neither correct nor consistent with the order passed by the Director of Public Health. ~~xxxxx~~
~~xxxxxxxthisxorderxwasxreceivedxbyxthexplffxonx13x5x1953x~~

9. The fact that the Assistant Director had misconstrued the order passed on 6-2-1953 by the Director of Health came to light when plaintiff ~~xxxxxx~~ appealed to Government for revision of the order passed by the Director of Health. Plff's appeal was dated 29-4-1953. While forwarding this appeal application to the Govt the Director of Public Health had forwarded copies of both the charge-sheets along with his remark. Agreeing with the remarks of the Director of Public Health the Government had rejected the plff's appeal. The same had been communicated to the plff through the Medical Officer of Health Karwar. ~~Yet in the meanwhile the plff~~ forwarded another appeal application on 13-5-1953 which was not forwarded to the Government as the matter had already been covered up. There were 2 enquiries conducted against the plaintiff. At the end of the second enquiry all the charges except one had been held proved, and after giving him an opportunity to submit his say as regards the punishment the D.P.H. passed an order dated 6-2-1953. That is the only order under which the reduction in pay has been brought into

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effect. But the plff is either trying to twist the facts or labouring under some misunderstanding.

10. When the discrepancy between the order passed by the D.P.H. on 6-2-1953 and the order communicated to the Plff by the A.D.P.H. Belgaum on 9-2-1953 came to the notice of the D.P.H. Poona the latter asked the A.D.P.H. to explain as to how he ~~issued~~ communicated to the plff an order contrary to what the D.P.H. had decided. The Assistant Director reported on 4-11-1953 that he had issued the memo as a result of misunderstanding. Therefore by letter No.V 3602 dated 4-11-1953 the Medical ^{office} of Health Kanara was informed by the A.D.P.H. that the letter dated 6-2-1953 from the D.P.H. had been misconstrued by him and that the plff's pay had been permanently reduced by Rs.4/- and that the plff should be informed accordingly. In these circumstances it will be clear that plff's pay had been ordered to be reduced permanently by Rs.4/- per month by the Director of Health Poona and this point had been considered by the Government when plff had preferred his appeal. Although this order was misunderstood or misconstrued by the A.D.P.H. the plff cannot rely upon it as the original order dated 6-2-1953 had never been changed or revised. The Director of Public Health was the proper authority to pass such an order and the Court cannot revise or consider this order. The mistake was committed by the Assistant Director in interpreting this order. Therefore it cannot be said that the reduction of the plff's pay had been effected under a revised order or that it was illegal. In fact question of legality or otherwise of a wrong order does not arise in this case, as the order dated 6-2-1953 stands as it was passed originally.

11. The plff has already exhausted his remedy by appealing against the order of reduction and his appeal dated 29-4-1953 had been rejected by

the Government on 27-7-1953. The plff had not submitted any appeal to Government after the clarification of the Director's order was communicated to him on 4-11-1953 by the A.D.P.H. Therefore the allegations made in plaint paras 1,2 and 3 are not admitted. They cannot be the proper basis for any grievance. Plff has wrongly assumed that the initial order had been subsequently amended on 4-11-1953. It is also incorrect to say that Government had ~~ix~~ confirmed the order dated 9-2-1953.

12. The assertions made in plaint para 4 are not correct. He does not admit the correctness or the propriety or the legality of the order dated 9-2-53. But as pointed out above the letter dated 9-2-53 only communicated the order passed by the Director of Health on 6-2-53. Therefore the propriety or the legality of this letter dated 9-2-1953 does not arise. It is the order dated 6-2-1953 under which the deductions have been made. Therefore it is incorrect to say that what has been done after 9-2-1953 was illegal. What was done after 9-2-53 was ~~ix~~ only to correct the mistake ^{committed} in communicating the order.

13. Allegations in plaint para 5 are not admitted. There has been no amendment of the original order dated 6-2-1953. The allegations made in para 5 of the plaint are based on wrong interpretation of the facts of the case. The reduction was never restricted to one year. The plff cannot rely upon the mistake committed by the Assistant Director in misinterpreting the order of the Director of Public Health.

14. The allegations made in plaint para 6 are not admitted. This is not a case where a final order of punishment has been revised later on, after it was once passed. Therefore no question arises as to whether the Director of Public Health had become functus officio after he passed his order dated 6-2-1953. It was not the Assistant Director who had passed the order of punishment. Under the circumstances this is not a case of enhancement of the punishment by amending

the order without jurisdiction as alleged by the plff. Therefore there has been no illegality, as alleged in plaint para 6.

15. It is therefore clear that the Director of Health who had passed the order on 6-2-1953 had never reduced the plff's pay only for 1 year as alleged by plff in plaint paras Nos. 7 and 8. Plff is therefore not entitled to claim the refund of Rs.39/- legally deducted out of his pay

16. The plff knew well that his pay had been reduced permanently by Rs.4/- per month. He did not prefer any appeal even after 4-11-1953. On the other hand ^{he} acquiesced in the said order by drawing his pay without protest after 6-2-1954. Hence he is estopped from now challenging the deductions already made out of his pay which he received with open eyes and without any protest

17. The assumption of the plaintiff that the order passed on 9-2-1953 was subsequently amended on 4-11-1953 has no foundation. The basis of the deduction is the order dated 6-2-1953 and it has never been changed.

18. The question for consideration in this case is as to whether the wrong communication of a valid order would affect the validity of the order itself. As already pointed out above the memo dated 9-2-1953 specifically mentioned the number and order passed by the Director of Public Health on 6-2-1953. So the plaintiff knew well that the original order had been passed by the D.P.H. himself. The mis-statement made in the communicating memo dated 9-2-1953 cannot affect the validity of the main order. The plff's plea is therefore not tenable and the whole case ^{for the plff} is based on twisted facts.

19. The plff has no right to sue. Hence the plff's suit deserves to be dismissed with costs.

I, B.S.Mavinkurve, District Government Pleader,
Kanara, Karwar do hereby declare that the contents of the
above written statement are true to the best of my knowledge
and belief.

Signed this 3rd day of March 1955.

Dist, govt. Pl. Kanara.

65 65
No. 961 of 1955.
Karwar, 20/10/1955.

From

The District Government Pleader,
Kanara, Karwar.

The Remembrancer of Legal Affairs, Bombay.

Sir,

I am glad to inform you that O.S. 183-1954 and No. 28-1955 both filed by Vaccinator M.S. Naik against the state of Bombay have been dismissed with costs. Copy ~~of~~ of the judgment will be forwarded ~~w~~ in due course.

Yours faithfully,

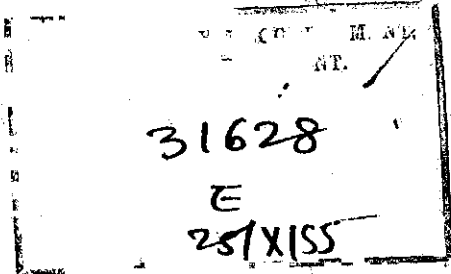
Manoj K. G.

Dist. Govt. Pleader, Kanara.



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Suits :

Kanara.

To recover Rs. 39 being the arrears of his pay from the month of February to November 1954.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 16033/E.

Bombay Castle, 23rd July 1955.

Letter from the Director of Public Health, Poona, No. S-6-A of 1955, dated the 7th January 1955—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), KARWAR.
Civil Suit No. 183 of 1954.

M. S. Naik	..	..	.. Plaintiff;
	versus		
The State of Bombay	..	..	Defendant.

Memorandum to the District Government Pleader, Karwar, No. 4616/E, dated the 1st March 1955—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

original for J. R. DHURANDHAR,
Secretary to Government.

MO-A Leg H 89-1

[P. T. O.]

Submitted for signature
12 39111 D.S(Civil)

To

*The Local Self-Government and Public Health Department,

*The Collector of Karwar,

The District Government Pleader, Karwar (with two copies of the brief),

Director of Public Health, Poona.

*With a copy of the brief.

No. _____ of 1955.

Copy forwarded for information and guidance to

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KANARA CIVIL SUIT NO. 183 OF 1954.

Chronological Statement of Facts.

The plaintiff Shri M. S. Naik has filed this suit against the State of Bombay to recover Rs. 39, being the arrears of his pay from the month of February to November 1954, and the costs of the Suit.

2. The plaintiff was working as Vaccinator in 1951 in Karwar town. He was chargesheeted for certain acts of commission and omission as stated in Memo. No. V/10564 of 1951, dated the 15th September 1951. The Assistant Director of Public Health, S. R. D., held a departmental inquiry against plaintiff recorded all oral and documentary evidence after giving him full opportunity to defend and submitted his report on 23rd September 1952 to the Director of Public Health, Poona, holding the plaintiff guilty of eight charges and recommending that the plaintiff's pay should be reduced to Rs. 45 which is the initial pay of a vaccinator for a period of one year without effect on his increments and the cost of the doses may be recovered from him. On 25th October 1952 the plaintiff was served with a copy of the Enquiry Officer's Report and a notice to show cause why the proposed punishment should not be awarded to him. The Director of Public Health by his order, dated the 6th February 1953 passed the following order :—

“As Shri M. S. Naik has pleaded for mercy, his pay should be reduced by Rs. 4 per mensem only and directed the Assistant Director of Public Health to write to Shri Naik to the above effect, mentioning the present pay of Shri Naik and also his pay after reduction.”

3. On 9th February 1953, the plaintiff was informed under the signature of Assistant Director of Public Health as under :—

“His pay of Rs. 57 is reduced by Rs. 4 per mensem for a period of one year without effect on his future pay. His pay after reduction will be Rs. 53 with effect from the date of the order from the Director of Public Health, Poona.”

The plaintiff filed an appeal to the Government which was dismissed on 27th July 1953. On 4th November 1953, Assistant Director of Public Health issued orders to inform the plaintiff of the mistake committed in communicating the order of Director of Public Health to him, and accordingly—

The correction that—

“For the words ‘for a period of one year without effect on his future pay’ should be substituted the word ‘permanently’ was made in sub-paragraph 1 of the memo., dated 9th February 1953.”

4. On 6th June 1954, the plaintiff gave a notice of suit under section Civil Procedure Code and on 10th December 1954 the plaintiff filed this suit in the Court of the Civil Judge, Senior Division, Karwar for the abovementioned relief.

5. The plaintiff, though denying the correctness or the legality of the order, dated 9th February 1953, did not ask for any relief to set aside this or any other order. He asks for the arrears of pay from February 1954 to November 1954, only.

Grounds of Defence.

Before dealing with the main contentions raised in this suit, it would be desirable to invite the attention of the District Government Pleader to the several misstatements made in the plaint. The plaintiff suggests in paragraphs 1 and 2 of the plaint that the order reducing his pay by 4 rupees per

mensum for one year only was passed by the Director of Public Health. This suggestion is not correct. The Director of Public Health passed an order, dated 6th February 1953 permanently reducing the plaintiff's pay by Rs. 4 per mensem. Second averment in paragraph 3 of the plaint that the Government confirmed in appeal the order as stated by the plaintiff in paragraph 2 of the plaint is not correct. The Government confirmed the order of the Director of Public Health as given in the Chronological Statement of Facts. Third averment in paragraph 4 of the plaint relates to the legality of the order as first communicated to him. It is true that the order as conveyed to the plaintiff on 9th February 1953 by Assistant Director of Public Health is not correct. In fact the question of legality or otherwise of a wrong order will never arise. The subsequent averments in paragraphs 5 and 6 are also misleading. All these averments should be specifically denied.

2. It appears from paragraphs 5 and 6 of the plaint that the plaintiff is trying purposely to twist the facts of the case. The original order passed by the Director of Public Health provided for the permanent reduction of the plaintiff's pay by Rs. 4 per mensem. The said order was neither amended nor changed in appeal. The Government confirmed the order of the Director of Public Health as passed on 6th February 1953. As the assumption of the plaintiff that the order passed on 9th February was amended subsequently on 4th November 1953 has no foundation in this case, the plaintiff's plea that the Director of Public Health has enhanced the Plaintiff's punishment does not survive. The Director of Public Health passed only one order and not two as wrongly supposed by the plaintiff. He has nowhere challenged as illegal, the order of the Director of Public Health passed on 6th February 1953.

3. The question for consideration in this case is whether the wrong communication of a valid order will affect the validity of the order itself. It may be seen from the memo., dated 9th February 1953 that it specifically mentions the order of the Director of Public Health. So the plaintiff had the idea regarding the passing of the orders by the Director of Public Health. The plaintiff wrongly believed that the order passed by the Director of Public Health on 6th February 1953 was in the form as stated by the plaintiff in paragraph 2 of the plaint. In fact, the order was not in that form. The misstatement made in the communicating memo., dated 9th February 1953 was only corrected afterwards. But this correction will not affect the validity of the main order. The plaintiff's plea is, therefore, not tenable.

4. The order was passed on 6th February 1953 and the plaintiff filed this suit on 10th December 1954. His right to challenge the legality of the order was time barred under article 14 of the Indian Limitation Act. The plaintiff cannot therefore claim arrears of pay from the months from February to November 1954. Deduction of Rs. 4 made in the plaintiff's pay per month from February to November 1954 was legal and valid.

5. The plaintiff gave the notice of suit on 6th June 1954. The cause of action for each month's pay arises after the expiry of the month. The plaintiff has not given notice for the arrears of pay arising in June to November 1954. His claim for those arrears is therefore not tenable. A copy of the notice is not in the record of the case. The District Government Pleader may obtain a copy and raise other defences if the notice does not comply with other requirements of section 80, Civil Procedure Code.

6. The suit is barred under section 4 read with section 6 of the Pensions Act. The suit relates to grant of money by

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Government. Section 6 does not authorise the Court to make any order where government's liability regarding such grant of money is affected. The suit for arrears of pay is therefore not maintainable.

For the above reasons it should be contended that the suit fails and should be dismissed with costs.

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From

The District Government Pleader,
Kanara, Karwar.

To

The Remembrancer of Legal Affairs, Bombay.

Sir,

I have forwarded herewith uncertified copies of
the judgments in O.S.No.183-1954 and 28-1955. Both the
suits were tried as companion suits. Both the suits have
been dismissed with costs. I have obtained certified copies
of judgment and decree and I am executing the decrees.
Result will be intimated in due course.

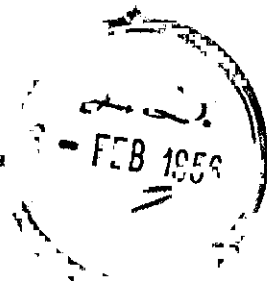
Yours faithfully,

Manu C
Dist.Govt. Pleader.

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30/1/56, 72



Submitted for information

OK

9/12

Submitted by

9-2

Received on- 10-12-1954

Registered on 11-12-1954

Decided on 18-10-1955

Duration- 0-10-8

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION KARWAR.

AT KARWAR

Exh. 51.

Original Civil Suit No. 183 of 1954

Mr. M.R.Kamat.

Manjunath Sannayya Naik, aged 50,)
Vaccinator, Karwar.) Plaintiff.

against

District
Government
Pleader.

The State of Bombay.) Defendant

Claim Rs. 39/- for all purposes.

This is a suit by a vaccinator against Government for the recovery of Rs. 39/- being the arrears of pay legally due to him from the Government from February, 1954 to November 1954 inclusive.

The Plaintiff is a vaccinator in the service of the State of Bombay. An enquiry against him was started by the Assistant Director of Public Health, S.R.D., Belgaum (here after referred to as A.D.P.H.) for negligence in duties and disobeying the orders of superiors etc. and a charge-sheet containing 9 charges was framed against him on 15-9-51.

*o.p.2

The A.D.P.H. after completing his enquiry found him guilty of nearly eight charges and proposed a punishment of the reduction of his pay to his initial pay of Rs. 45/- for a period of one year without effect on his future increments (Vide his letter Ex.32 dated 23-9-1952 addressed to the Director of Public Health). After thus finding him to be guilty and proposing the punishment he sent up the matter to be dealt with finally by the Director of public Health Poona (Here after called D.P.H.). The D.P.H. agreed with the conclusions arrived by the A.D.P.H. and proposed a punishment of the reduction of Plaintiff's pay to the minimum of his pay-scale for a period of two years without affec-

ting the future increments. He then directed a show-cause notice to the Plaintiff why he should not be dealt with the proposed punishment (Vide Ex.33 dated 25th October, 1952). At this stage, it seems, the Plaintiff pleaded for mercy. Taking his plea into consideration the D.P.H. finally punished him by permanently decreasing his pay by Rs.4/-. The order passed by him is at Ex.34, dated 6-2-1953. The relevant part of it runs as follows:

"As Shri M.S. Naik, vaccinator, Karwar Town has pleaded for mercy, his pay should be reduced by Rs.4/- p.m. only."

The D.P.H. asked the A.D.P.H. to communicate this order to the Plaintiff. But the order communicated by the A.D.P.H. was something quite different from this order. His communication to Plaintiff is as below:

"His pay of Rs.57/- is reduced by Rs.4/- for a period of one year without effect on his future pay i.e. his pay after reduction will be Rs.53/- with effect from the order from the D.P.H. from the Government of Bombay, Poona (Vide Ex.35 the copy of the communication dated 9-2-1953)."

The words- "for a period of one year without effect on his future pay" were entirely new words which did not find any place in the order passed by the D.P.H. In view of the communication made by the A.D.P.H., Plaintiff understood that the punishment meted out to him was only the reduction of his pay by Rs.4/- for a period of one year without effect on his future pay.* He however, felt aggrieved by this order and tried to approach the Government against the order by his appeal dated 13-5-1953 (Vide Ex.39 his appeal memo); but he was informed by the A.D.P.H. on 16-1-1954 that the Government had considered the matter in deciding Plaintiff's another appeal and had passed orders on 27-7-1953 and that therefore it was unnecessary to forward the Plaintiff's appeal to the Government. The discrepancy, however between the order passed by the D.P.H. on 6-2-1953 and the order communicated to the Plaintiff by the A.D.P.H. on 9-3-1953 came to the notice of the D.P.H. some time in October, 1953 or may be even earlier to that and he directed the A.D.P.H. by his letter dated

27-10-1953 that the communication made by him (that is, the A.D.P.H.) to the Plaintiff should be corrected in the light of the original order passed by him. Consequently the A.D.P.H. made the necessary correction by substituting the word 'permanently' in place of 'for a period of one year without effect on his future Pay' and communicated the corrected order to the Plaintiff through the Medical Officer Kanara by his letter dated 4th November, 1953 (vide Ex. 38 the letter). The present suit which, is brought by Plaintiff is directed against this corrected order.

2. The case made out by him in his plaint is to the following effect: His pay of Rs. 57/- had been reduced by Rs. 4/- for a period of one year without effect on his future pay from the date of the order made by the D.P.H. that is, from 6-2-1953 as per the communication made to him by the A.D.P.H. by his letter dated 9-2-1953 and that further in the appeal made by him to the Government against this order this order was confirmed by the Government. He therefore submits that the order which was once passed and communicated to him and which was further on an appeal confirmed by the Government could not be revised again by the same punishing authority. In other words he takes the communication made by the A.D.P.H. as the basis of the order passed by the D.P.H. and submits that that was the order which should prevail against him. His further submission is that the later correction that was made by the A.D.P.H. was a revision of the original order without any further cause or enquiry and, therefore, in his opinion, the ~~xxxxxx~~ revision was illegal and ineffective. According to him the only valid order against him was the order that was communicated to him by the A.D.P.H. originally and on that basis he submits that he was entitled to his future pay after 6-2-1954, that is, after the completion of the one year period as stated in the order. On this basis he claims in this suit the difference of Rs. 39/- in his pay that is due to him from 6-2-1954 till November, 1954 (inclusive.)

3. The Government pleader by his written statement, E Ex.9. resists the suit. He denies all the allegations made by the Plaintiff and contends as follows: According to him there was no revision of the punishment that was meted out to Plaintiff by the D.P.H. The original order of the D.P.H. was to the effect that the pay of the Plaintiff should be reduced by Rs.4/- permanently. This original order was, however, misinterpreted by the A.D.P.H. as a result of which he made the sort of wrong communication which had been relied upon by the Plaintiff. What was done subsequently was to merely correct the wrong interpretation put upon by the A.D.P.H. Plaintiff's contention, therefore, could not survive as the reduction of Plaintiff's pay had been effected not by any revised order but by the original order itself the character of which could not be changed by the sort of wrong interpretation put upon it by the A.D.P.H. The remaining contentions are all more or less technical. It is firstly contended that the suit was not in conformity with the notice given to the Government as the claim made in respect of pay from June to November, 1954 was not included in it. It is, therefore, submitted that the suit was not tenable under Section 80 C.P.Code. It is next contended that the suit was barred under section 4 * read with *8.p.5 section 6 of the Pensions Act as it is said the suit relates to the grant of money by the Government and that further the Court had no jurisdiction to make any order under those sections. Thirdly, it is contended that the Plaintiff could not claim the relief without getting the order of the punishment set aside and that in so far as such relief had not been claimed, the suit was not maintainable in the present form. Fourthly, it is contended that Plaintiff's right to question the legality of the order passed against him was barred under Art.14 of the Indian Limitation Act. Fifthly, it is contended that the Plaintiff's suit was barred by section 9 of C.P.Code as the order passed by the Director of Public Health was an administrative order and this Court

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therefore had no jurisdiction to grant any relief against it. Sixthly it is contended that the suit was barred by estoppel by acquiescence as the Plaintiff submitted to the order of punishment made against him. For all these reasons it is prayed that Plaintiff's suit should be dismissed with costs.

4. The following issues were set down for hearing at Ex. 17:

1. Is the claim in excess of Rs. 11/- covered by the notice issued under sec. 80? If not, is this excess claim tenable?
2. Whether the suit is barred under sec. 4 read with sec. 6 of the Pensions Act?
3. Can Plaintiff sue for refund of the deductions made out of his pay without getting the order set aside or declared as illegal, and ultra vires?
4. Whether this suit is barred under Sec. 9 C.P.C.
5. Whether the basis for the reduction of pay is the order dated 6-2-53 passed by the Director of Public Health?
6. If so, whether this order reduced Plaintiff's pay permanently or only for one year?
7. Can Plaintiff rely upon the letter dated 9-2-1953 of the Assistant Director of Public Health and assert that the reduction was only for year upto 6-2-1954?
8. Does Plaintiff prove that the original punishment of reduction was only for one year and that this was illegally revised on 4-11-1953?
9. Whether Defendant proves that Plaintiff acquiesced in the order dated 6-2-53 and is therefore estopped from challenging that order?
10. Whether Defendant proves that Plaintiff has no right to sue?
11. What decree?

5. Findings

1. Is not covered by the notice but the cause of action in respect of it is covered by the notice. The claim therefore, is maintainable.
2. No.
3. No.
4. No.
5. Yes.
6. Plaintiff's pay was reduced permanently.
7. No.
8. No.

9. No.

10. No.

11. As per order.

R e a s o n s

6. This suit and suit no. 28/1955 are treated as companion suits by mutual consent of parties. The other suit namely 28/1955 is also by this very Plaintiff against the Government but the relief claimed in it is worth reference to an order passed by the D.P.H. in another departmental enquiry that was conducted against the Plaintiff. That enquiry and the enquiry with which we are concerned in this suit were conducted immediately one after the other and are closely linked with each other. Further many of the technical pleas taken in both the suits are common pleas. Therefore I would propose to discuss the facts of that as well in this judgment and the judgment now to be delivered shall govern both.

o.p.7

7. No oral evidence was led in either suit. So both the cases stand to be disposed of in the light of the documentary evidence adduced by both sides.

8. I would deal with the facts of this case first before taking up the facts of the other case. The questions that are involved for consideration in this suit are very short ones and they are: Whether the D.P.H. made any subsequent revision of the original order of punishment passed by him? If not, whether Plaintiff can validly rely upon the wrong interpretation or wrong communication made by the A.D.P.H. Upon the answers to be given to these two questions hangs the fate of Plaintiff's suit.

9. Plaintiff's entire case is built up on the assumption that there was a subsequent revision of the original order of punishment passed by the D.P.H. on 6-2-1953. According to him the original order of Punishment was in the form in which it was communicated to him by the A.D.P.H. on 9-2-1953 under Ex.35 and that it was subsequently revised or amended in a totally different form. Having made such an

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assumption he ~~xxx~~ argues at para 6 of his plaint thus:

".....when once a final order of punishment is passed and communicated to the defaulter in any enquiry, it is final so far as the officer passing the same is concerned and he becomes functus officio in the matter and cannot himself alter it at all. Further, in this case, the said initial order had been confirmed by the Government. Under the circumstances, the enhancement of the punishment by an amendment is entirely without jurisdiction and quite illegal.

This in brief is the gist of the submission.

10. But on going through the documents, I find this assumption to be quite wrong. The original order of punishment passed by the D.P.H. on 6-2-1953 is contained at Ex.34. It runs thus:

"As Shri M.S. Naik, vaccinator, Karwar town pleaded for mercy, his pay should be reduced by Rs.4/- p.m. only.

In your order to Shri Naik to the above effect the present pay of Shri Naik and also his pay after reduction should be mentioned.

A copy of your order should please be furnished to me.

This order was addressed by D.P.H. to the A.D.P.H. The A.D.P.H. however, while communicating the purport of this order to the Plaintiff introduced some words of his own into it with the result that the basic order was changed quite out of complexion. The communication made by the A.D.P.H. to the Plaintiff is at Ex.35:

"His pay of Rs.57/- is reduced by Rs.4/- for a period of one year without effect

on his future pay, i.e. his pay after reduction will be Rs.53/- with effect from the date of order from the Director of Public Health for the Government of Bombay, Poona. "

Now as can be seen the words- "for a period of one ~~xxxx~~ year without effect on his future pay" were entirely his own, but they produced a very startling effect. They in effect robbed the rigour of the original order which was that the pay of the Plaintiff should be reduced by Rs.4/- permanently and instead made the punishment effective for only one year. In other words the reduction which was intended to be permanent was made to last for a period of only one year.

11. Now how the A.D.P.H. read such an unfounded and unwarranted meaning into the original order is a matter which remains very much in the dark because the A.D.P.H. has not been examined in this case. But the Government pleader tries to explain the error committed by the A.D.P.H. against the following background. The A.D.P.H. in his report had found the Plaintiff to be guilty of 8 charges and had proposed the sort of punishment that he read into the final order passed by the D.P.H. This is clear from the A.D.P.H.'s report at Ex.32. The D.P.H. agreed with the findings given by the A.D.P.H. and passed a provisional order that the pay of the Plaintiff should be reduced to Rs.45/- (his minimum pay) for a period of 2 years without effect on future increments. This provisional order was the intended punishment which was to be visited upon the Plaintiff and he called upon the Plaintiff to show cause why he should not be dealt with in that manner (Vide Ex.33) which contains all this). After this it seems the Plaintiff made a mercy petition. Taking that into consideration the D.P.H. passed the final order on 6-2-1953 under Ex.34 whereby he reduced Plaintiff's pay by only Rs.4/- but permanently and asked the A.D.P.H. to communicate the same to Plaintiff. It was

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submitted by the Government pleader that when the A.D.P.H. received this communication he had in his mind the original order that he had proposed in his report and that therefore he suddenly jumped to the conclusion that the order proposed by the D.P.H. was in terms of the punishment that he had originally proposed ~~xxx~~ and so communicated to Plaintiff a copy of his own original proposed reduction.

12. The explanation though it has the requisite background, still, seems to be a bit fantastic, but we are not concerned here as to what really influenced the A.D.P.H. into reading the wrong sort of meaning that he read into the order. The point which really matters is whether the basic order passed by the D.P.H. on 6-2-1953 was in conformity with the later amended order which was communicated by the A.D.P.H. to the Plaintiff and if the basic order had not been tampered with, then I do not think the mistaken meaning put upon it by the A.D.P.H. in the first instance can be advantageously relied upon by the Plaintiff for the purpose of urging his claim in this suit.

13. It is not disputed before me that the D.P.H. is the appointing authority and also the punishing authority so far as the Plaintiff is concerned. The A.D.P.H. being the subordinate of the D.P.H. is merely an assisting authority to the D.P.H. He has no final voice in the matter of appoint or punishment. So any mistake made by the A.D.P.H. in interpreting the order cannot in any way help the Plaintiff when there is absolutely no mistake in the basic order passed by the D.P.H. himself.

*o.p.10

14. It was however argued for Plaintiff that a punishment order being a penal order the importance of the order lay in what was ultimately communicated to the Plaintiff who was the victim of the order and not in what should have been communicated to the Plaintiff. With respect to the ~~learned~~ learned pleader for the Plaintiff I am not

prepared to agree with him. The unsoundness of the argument can be revealed at once if we take a reverse case. Now supposing in this case if the A.D.P.H. instead of communicating the order in such a form had communicated to Plaintiff that he had been dismissed from his service, then I do not think the Plaintiff's pleader would have argued in the same vein and stated that the communicated order being one for dismissal ~~xxx~~ inspite of the basic order being one ~~effor~~ mere reduction, the communicated order should alone endure against the basic order. The learned pleader is now trying to rely upon the communicated order in this particular instance evidently because it is more favourable to him than the basic order; but he would have certainly fallen back on the basic order in a case of the reverse type which itself exposes the fallacious nature of the submission made by him. It need not be reiterated that what

matters most in every instance is the basic order from which the punishment or the reward emanates and not the communicated order which being a mere vehicle for conveying the basic order cannot take the place of the basic order itself. Therefore, I am not prepared to accept the argument that in the case of Plaintiff the mistaken communication made by the A.D.P.H. in the first instance should be taken to be the basic order itself.

15. The next submission made in this behalf is that the D.P.H. and the Government had not tried to correct the mistaken communication in time though it had come to their notice and therefore it ^{is} urged for the Plaintiff that they should be presumed to have approved the communication that had been ~~*primarily~~ made to the Plaintiff by the A.D.P.H. In support of this submission it was pointed out that the Plaintiff had preferred an appeal to the Government on 13-5-1953 against the communicated order

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which was that his pay had been reduced by Rs.4/- for one year without effect on his future pay, but he was informed by the A.D.P.H. on 16-1-1954 that the Government had considered the matter in deciding the Plaintiff's another appeal and had passed orders in its no.P.H.D. 1753/6003/D dated 27-7-1953 and that therefore it was unnecessary to forward the Plaintiff's appeal to the Government at all. From this the Plaintiff's pleader submits that the Government had by its aforesaid order confirmed the primary order that had been communicated to the Plaintiff on 9-2-1953 and therefore the communicated order alone should prevail. The submission, in my opinion is very much mistaken. In order to understand the true situation we must know the following facts.

16. There were in fact two enquiries against the Plaintiff. The first one was in respect of the 9 charges noted above and the second was in respect of 5 more fresh charges which was held subsequent to the first one. We are now concerned in this suit with the first enquiry relating to the 9 charges. It in fact ended in Plaintiff's punishment by the D.P.H. on 6-2-1953 (Vide Ex.34.) During the pendency of this enquiry the second enquiry relating to five additional charges was started against Plaintiff by his suspension from service on 5th April, 1952. This enquiry ended on 11th April, 1953 wherein the D.P.H. leniently dealt with the Plaintiff in view of the fact that he had already been punished in the first enquiry. The relevant part of the order passed therein is to the following effect:

The charges were grave and merited severe punishment. But as he had only recently been punished, the undersigned was pleased to give Shri Naik another chance to rectify his wrong doing and accept his unconditional plea for sympathy. If, however Shri Naik did not propose to do so he told that further action

*would be taken as per rules. In his reply dated 27-3-1953 he has given an underserved guarantee strictly to carry out his prescribed duties and to submit to discipline without demur and pleaded for mercy. The undersigned is therefore pleased to order that Shri Naik should be reinstated in service and posted as Vaccinator, Karwar Town.

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As all the 5 charges have been proved against him, he is not entitled to receive full pay for the period of his suspension. The undersigned however directs that the period of suspension should be counted as duty for pension...."(Vide Ex.30 in the other suit no.28/55).

The Plaintiff went in appeal to the Government against this order by his memorial dated 29th April, 1953 (vide Ex.45). While forwarding this appeal memorial to the Government the D.P.H. also referred to the result of the first enquiry and the punishment that he had awarded to the Plaintiff already and recommended for the rejection of the appeal (Vide Ex.46 the forwarding remarks made by the D.P.H. to the appeal memorial). It is pertinent to note here that the D.P.H. while referring to the punishment that he had meted out to him in the first enquiry correctly referred to the basic order that the pay of the Plaintiff had been reduced permanently by Rs.4/- and not to the mistaken communication made by the A.D.P.H. about this order. This shows that the D.P.H. was quite unaware at that time about the mistaken communication made by the A.D.P.H. to the Plaintiff. Plaintiff's appeal was rejected by the Government on 27th July 1953 under the no. mentioned by Plaintiff already. Now subsequent to the making of this appeal on 29th April 1953 the Plaintiff thought of appealing also against the order made in the ~~first enquiry~~ first enquiry relating to the 9 charges.

and he accordingly submitted another appeal memorial on 13th May 1953 complaining against the penalty meted out to him in the first enquiry (Vide Ex.39 his appeal memorial). To this subsequent appeal memorial the A.D.P.H. intimated to Plaintiff on 16th January 1954 that the Government had considered the matter in deciding Plaintiff's another appeal and had passed the orders on 27th July, 1953 and that therefore it was unnecessary to forward the Plaintiff's appeal to the Government at all. *So being it cannot be validly urged by Plaintiff that either the D.P.H. or the Government was aware of the mistaken communication made by the A.D.P.H. about the basic order or that either the D.P.H. or the Government had approved of the order or confirmed it. What was done by the Government was to confirm the basic orders passed by the D.P.H. in both the enquiries without any reference to the mistaken communication made by the A.D.P.H. The submission, therefore, is not at all correct in view of these facts.

*o.p.13

17. The result of all this discussion is that the basic order passed by the D.P.H. and not the mistaken communication made by the A.D.P.H. can alone prevail and when that prevails the Plaintiff has absolutely no case at all. Seeing the futility of his case the Plaintiff's pleader however, tried to make out a totally new case by shifting the ground of attack against the D.P.H. himself. He for the first time in his argument tried to suggest that the basic order passed by the D.P.H. was quite in consonance with the communication made by the A.D.P.H. about it and that later on the D.P.H. compared with the basic order it was in order to visit upon the Plaintiff a severer sentence as the D.P.H. had been got irritated by some of the reckless allegations made by Plaintiff against him. With respect to the learned pleader I must observe that this line of argument is neither warranted by the facts on record nor by the original case as made out in the plaint. In the plaint

In the plaint the Plaintiff's target of attack was only the A.D.P.H. Not a word is said therein against the integrity or bona fides of the D.P.H. All along as observed by me the Plaintiff had gone on the wrong assumption that what had been conveyed to him in the first instance by the A.D.P.H. was the correct interpretation of the basic order itself. On this faulty assumption he built up his entire case of subsequent revision of the basic order etc. But in the end when he saw from the facts that the assumption made by him was faulty, he tried to shift the ground of attack against the D.P.H. himself. This certainly cannot be countenanced. His case which has been built up on a faulty assumption must fail in the face of the basic order regarding the integrity and bona fides of which, I have absolutely no doubt. The order clearly states that ~~his~~ the pay of the Plaintiff had been reduced by Rs.4/- which in other words clearly conveys that his pay had been reduced permanently by Rs.4/-. The mistake about the first communication made by the A.D.P.H. to the Plaintiff it seems came to the notice of the D.P.H. for the first time in October, 1953. He then directed the A.D.P.H. by his letter dated 27th October 1953 to correctly convey the meaning of his original order (Vide Ex.37). The A.D.P.H. then conveyed the true import of the original order to the Plaintiff by his letter dated 4th October 1953 (Vide Ex.38). In this letter he corrected his original communication by substituting the word 'permanently' in place of the words 'for a period of one year without effect on his future pay'. The correction so made was not by virtue of any revision made in the original order but a correction of the mistake that was made in conveying the import of it. Therefore in the final analysis the Plaintiff's case is bound to fail in the face of the basic order which was never revised at all. That being my final conclusion the suit must fail.

*o.p.14.

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18. I now take up the ~~xxxxxxx~~ technical side of the contentions advanced against the case. The first contention is that the suit claim is not in consonance with the notice given under section 80 to the Government because it includes more claim, that is, the arrears of pay from June to November 1954, than what was claimed in the notice. The notice which was given is at Ex.24. It is true no doubt the claim in respect of the arrears of pay from June to November, is not included in the notice. But we should remember the fact that the notice was given on 6th June 1954 and therefore *Plaintiff could not have included future claims arising after the notice. What is important to be seen in such things is whether the further claim made in the suit emanates from the same cause of action. That done, it would be sufficient compliance with the notice. Because at the time of the notice it is not possible to refer to a further claim which may arise before a suit can be brought. For authority on this point the ruling in Chandulal V. Bombay Province, A.I.R.1943 Bombay, 138 may be usefully referred to. It is observed ~~the~~ there that :-

*o.p.15

To state a future cause of action in the notice is not a compliance with Sec.80 but where a cause of action exists of which notice is given the notice is not rendered bad, because it refers to a possible further claim which may arise before a suit can be brought. The object of Sec.80 is to give to the public officer concerned notice of the claim which is going to be made against him, and to give him reasonable time in which to consider his reactions. In construing Sec.80 it must be remembered that the suit

cannot be brought for two months after the date of the notice. The cause of action, which is to be stated in the notice is the bundle of facts which go to make up the right in respect of which the Plaintiff proposes to sue, and it is obvious that before the suit can be brought it may be ^{that} the bundle of facts will be added to or subtracted from..."

The principle enunciated in this ruling is much more emphatically restated in *Dinbai. V. Dominion of India*, A.I.R 1951, Bombay, 72. It is stated there that:-

The expression 'cause of action' in sec. 80 must be construed in a liberal way in favour of the subject, and so long as proper notice is given to Government as to the nature of the suit and the facts on which the Plaintiffs rely for obtaining the relief which they seek in the suit, the Court must be satisfied that there is a proper compliance with the provisions of section 80.

The section is not intended to be an instrument of oppression against the subject.

19. Now in this case it is not contended before me by the Government pleader that the additional claim made * in respect of the subsequent months is in respect of any subsequent cause of action arising after the notice. The cause of action as stated in the notice and also in the suit arose out of the basic order passed by the D.P.H. and the consequential relief regarding the arrears of pay only flowed from this cause of action. In the notice the relief was limited till June because the notice was given in June. But the suit actually *was filed* on 10th December 1954. So at the time of the

*o.p.16

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faling of the suit nearly 6 more months had elapsed and the ~~Plaintiff~~ Plaintiff naturally added the arrears in respect of these 6 months. In my opinion, therefore the claim made in respect of these additional months is not at all bad because they logically flow from the cause of action about which sufficient notice had been given to the Government. I over-rule the objection in this behalf.

20. The next contention of the Government pleader is that the suit was barred under section 4 read with section 6 the Pensions Act, as in his opinion, the suit related to a grant of money by Government. Reading section 4 of the Pensions Act, it can by no means be conceived that the pay of the Plaintiff could be regarded as a grant of money by the Government so as to bring it within the mischief of section 4. The contention, in my opinion, is very much mistaken.

21. The third contention is that the suit was barred under section 9 Civil Procedure Code. The exact submission on this point is that the order passed by the D.P.H. was an administrative order and this Court had no jurisdiction to grant any relief unless that order was found to be ultra vires. The Plaintiff, it is therefore submitted, had no right to sue for pay until the order was declared ultra vires. This again, in my opinion is a mistaken contention. The Plaintiff in this suit is not attacking the basic order passed by the D.P.H. as ultra vires. On the other hand he had wrongly assumed that the basic order was wrongly revised and having made such an assumption he attacks the alleged revision made by the D.P.H. So in this suit the Plaintiff does not so much quarrel with the administrative order that had been passed by the D.P.H. as with the alleged revision of the order made by him subsequently. Now if this assumption made by the Plaintiff was correct, then even according to the Government pleader the Plaintiff had case. So then admittedly the Plaintiff fails because the assumption

made by him was wrong. So it cannot be argued that the Plaintiff in this suit was contending against an administrative order. The contention, therefore has no substance in it.

22. The fourth contention is one of estoppel by acquiescence. The contention in this behalf is that the Plaintiff even after coming to know that his pay had been reduced permanently by Rs.4/- per month, did not prefer any appeal even after 4-11-1953 but on the other hand acquiesced in the said order by drawing his pay without protest after 6-2-1954 and hence it was submitted that the Plaintiff was estopped from challenging his deductions now made from his pay which he received with open eyes and without any protest. I must confess my inability to see eye to eye with this contention. In my opinion there is absolutely no scope for this type of contention. There cannot be any estoppel by acquiescence. In order to raise an estoppel it must be shown that the other party had been induced to change or alter its position by the act of the party complained against. Now the Government pleader has not shown how the position of the Government was altered or it suffered in any way by the act of the Plaintiff in accepting the pay that was given to him. On the other hand from the evidence already discussed it is clear that the Plaintiff is not guilty at least of taking the punishment visited upon him lying down though he might be guilty in other respects. The evidence makes it clear that he had all the while been grumbling and protesting and going in appeal. Therefore there can be no case of estoppel by acquiescence against the Plaintiff.

23. The final contention is that the Plaintiff could not sue for the refund of deductions without getting the order made by the D.P.H. set aside or declared as illegal or ultra vires. Here again I must observe the contention is made under a mistake. The Plaintiff does not quarrel with the basic order of the D.P.H. His whole case is built up upon a wrong assumption

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about ^{the} ~~one~~ order with which he was later ^{on} ~~on~~ intimidated. He thought that the later order was a revision of the original order, which in fact it is not. So there can be no question of getting the original order set aside in this case. On the other hand the Plaintiff based this suit on the original order as he wrongly conceived it to be. The suit therefore is not bad on that account.

24. In the end I over-rule all the legal objections raised against the tenability of the suit. But I must dismiss the suit as Plaintiff fails on the merits of the case itself.

25. I now come to the claim made in the companion suit namely, Original Suit no.28/55. In this suit the Plaintiff attacks the order passed by the D.P.H. in the second enquiry relating to the five charges which was subsequent to the one that we have discussed already above. Before the institution of this second enquiry the Plaintiff was suspended by the order of the D.P.H. dated 5th April, 1953. The enquiry ended on 11th April 1953 with the following order made by the D.P.H. The relevant part of which is as below:

"....The charges were grave and merited severe punishment. But as he had only recently being punished the undersigned was pleased to give Shri Naik another chance to rectify his wrong doing and accept his unconditional plea for sympathy. If, however Shri Naik did not propose to do so he was told that further action would be taken as per Rules. In his reply dated 27th March 1953 he was given an unreserved guarantee strictly to carry out his prescribed duties and to submit to discipline without demur and pleaded for mercy. The undersigned is therefore pleased to order that Shri Naik should be reinstated in service and posted as Vaccinator, Karwar town.

All the 5 charges have been proved against him, he is not entitled to receive full pay for the period of his suspension. The undersigned however directs that the period of suspension should be counted as duty for pension.

26. The Plaintiff now attacks the manner of the second enquiry and the order passed as above on various grounds. Firstly, he states that no opportunity was given to him to show cause before the order of his suspension and therefore he contends that the order of suspension itself was illegal and void. Secondly, he submits that though the order of suspension was made on 5th April 1952 the origin of the suspension order related back to an earlier date i.e., 30th March 1952 and though this was so, charges relating to a period posterior to 30th March 1952 that is 2nd April 1952 were included against him and therefore he submits that the suspension order did not relate to the second enquiry at all. In this connection he submits that the suspension order was intended to be made with reference to the first enquiry concerning the said charges, but when it was found out that it could not be sustained it was on second thought made to relate to the subsequent 5 charges. He therefore submits that the suspension was also bad on this account. Thirdly, he submits that the enquiry was entrusted in the hands of the A.D.P.H. Mr. Digne who had personal malice against the Plaintiff, and as such Mr. Digne was incompetent to hold the enquiry of judicial nature. Then he goes on to submit that Mr. Digne conducted the enquiry in a high-handed manner quite opposed to Departmental Rules and principles of natural justice. Lastly, he submits that the final order passed by the D.P.H. in the matter which has been noted above was totally bad because it was all too vague. For all these reasons he submits that he was entitled to receive full pay for the period of his suspension with due increment of Rs.2/- on 29th September 1952. He therefore, claims Rs.497-9-0 in all as the arrears of his pay to which he is entitled. *o.p.19

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*o.p.20

27. But on going through the evidence I do not find that Plaintiff has any case in this respect as well. The second enquiry against the Plaintiff came to be instituted under the following circumstances: After the completion of the first enquiry the Plaintiff it seems moved for his transfer from Karwar Town. *Then the A.D.P.H. who was camping at Karwar on 24th March 1952 found out that the Plaintiff had neglected his work and he made a report to the D.P.H. making fresh complaint, against the Plaintiff by his letter dated 30th March 1952 (Vide ex.24). Immediately after the receipt of this letter the D.P.H. on 5th April, 1952 ordered Plaintiff's suspension and further directed a fresh enquiry after framing necessary charges against him (Vide Ex.25 passed by the D.P.H.). Thereafter five charges were framed against the Plaintiff and he was furnished with the copy of the charges on 11th July 1952 (Vide Ex.20). Then after enquiry the above-mentioned order was passed by the D.P.H. in the end.

28., Now it is not disputed before me that the D.P.H. was the appointing authority and as such he was also the punishing authority. If specific authority on this point is still needed, page 29 of the Manual of Public Health may be seen where the powers to be exercised by the Director of Public Health are given and this may be read along with Rules 32, 33 and 34 of the Bombay Civil Service, Conduct and Discipline and Appeal Rules. Now the first contention of the Plaintiff is that he was not given any opportunity to show-cause before the suspension order was made by the D.P.H. But there is nothing in the Rules which requires the D.P.H. to give any such notice prior to ordering suspension. Suspension by itself is not a punishment, for it is a precursor to the enquiry to be held and further if in the enquiry the person is acquitted honourably then the full pay for the period of suspension together with the increments and allowances which were due to him during that period are restored to him. So suspension itself cannot be called a ^{hard} ~~hard~~

punishment as such. Its main object is to facilitate an enquiry against the person suspended by removing the person for the time being from the key-position he holds. The Plaintiff on his part could not quote any rules or authority in justification of the complaint made by him that such a notice was necessary prior to suspension. The contention, therefore has no substance in it.

29. The next contention is that the charges framed against the Plaintiff were in respect of a period posterior to the suspension. In this connection it is urged that the Plaintiff's suspension originated and related back to 30th March 1952 which is also admitted by the Government pleader. It is then urged that the first charge related to a period after 30th March 1952 which being posterior to the date of suspension the charge was bad. The contention, in my opinion, is misconceived. The charges framed against him do not relate to any posterior date after suspension. On the contrary they relate to Plaintiff's acts which were anterior to the date of the suspension. The particular sentence in the first charge upon which reliance is placed by the Plaintiff in support of his mistaken plea is the first sentence under the heading "Charge no. 1" in Ex. 20. It states thus:

" During the period of one year from the week ending 4th April 1951 to the week ending 2nd April 1952, you have performed etc. etc."

Now as can be seen the date 2nd April 1952 is referred to with the week ending with it. It does not refer to any act committed between 30th March 1952 which was the date to which the suspension related back and 2nd April 1952. But it relates to a period beginning from 4th April 1951 and ending with 2nd April 1952. In fact the acts of commission and omission mentioned in the charge relate to a period prior to 30th March, 1952, and further it can also be seen that the acts of commission and omission in respect of which the later charges were framed had nothing to do with the prior enquiry. These were fresh

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acts which arose after the first enquiry was started. It is now the say of the Plaintiff that the suspension order that was passed on 30th March 1952 was in respect of the prior enquiry. The pleson the face of it is fantastic because by the time the suspension order was given, the first enquiry was already far advanced. So it cannot be validly argued that the suspension order was made in respect of an enquiry which had already commenced and far advanced, On the other hand Exs. 24 and 25 clearly go th show that the suspension was in respect of *the later Departmental offence committed by Plaintiff. Ex.24 dated 30th March 1952 is the letter of the A.D.P.H. to the D.P.H. complaining about the fresh acts of commission and omission on the part of the Plaintiff after the first enquiry and Ex. 25 is the suspension order passed by the D.P.H. on 5th April 1952 which refers to the above letter of the A.D.P.H. which very clearly goes to show that the suspension was in respect of the fresh acts and not in respect of the prior acts relating to the first enquiry. The contantion, therefore, has absolutely no merits in it.

30. The third contention is that Mr. Dighe the A.D.P. who was the enquiring Officer was ill-disposed towards Plaintiff, ^{but} this by itself is not matter of great consequence, because Mr. Dighe is not the ultimate punishing authority. The enquiry that he made had to be approved by the D.P.H. who was the ultimate punishing authority. The Plaintiff on his part has nothing to say anywhere against the bona fides of the D.P.H. All the while his quarrel is with the A.D.P.H. Now as the evidence states the D.P.H. approved of the enquiry made by the A.D.P.H. which means that the enquiry was not in any way conducted in an unfair or high-handed manner. The Plaintiff's pleader was unable to cite any concrete instances regarding the unfair nature of the enquiry. The allegations, therefore, as remarked by me are easily made than proved. In fact the Plaintiff's pleader did not seriously urge this point at all.

31. The only point that he seriously pressed was regarding the alleged vagueness of the final order that was passed by the A.D.P.H. Here too, he concentrated all his attention on the part of the order which related to the pay pertaining to the period of suspension. The part of the order in question is as follows:

' As all the five charges have been proved against him he is not entitled to receive full pay for the period of his suspension' (Vide para 4 of Ex. 30 which is the order passed by the D.P.H.).

According to the submission made by the Plaintiff's pleader this was a very vague order and did not clearly specify the actual pay that the Plaintiff was entitled to for the period of suspension, and further in his opinion the order itself was bad with the result that the Plaintiff was entitled to full pay especially in view of the further fact that the Plaintiff had been let go without being punished in this enquiry.

*o.p.234

32. The submission in my opinion is also mistaken. The pay allowed to Government servants under suspension is stated in rule 51 of the B.C.S.R., ~~Vol. I.~~ Clause (b) therein was amended by the resolution No.1753/33 dated 13th April, 1950 a copy of which is at Ex.28. According to this amended rule the Government servant for the first year of his suspension was entitled to get half average pay with compensatory allowance, dearness allowance and house-rent allowance etc. It is not disputed before me that Plaintiff was given his due pay and allowance as contemplated under this rule. The only grievance now made before me is that the final order passed by the D.P.H. relating to this suspension period while reinstating Plaintiff in service suffered from vagueness and therefore it was bad. The particular part of the order attacked has been noted above already. It states that the Plaintiff was not entitled

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to receive full pay for the period of his suspension. I do not think how this order suffers from vagueness. The purport of the order is that Plaintiff was not entitled to get more than what he was given under suspension. The question of giving him full pay for the period of suspension could have arisen only if he had been honourably acquitted as contemplated in clause (b) of rule 152 of the B.C.S.R. But the order clearly states that the charges had been proved against the Plaintiff but in spite of that mercy had been shown to him as he had already been punished once and that further he had given a guarantee strictly to carry out his prescribed duties and to submit to discipline without demur. That being so the Plaintiff could not as of right claim the benefit of full pay for the period of suspension which is also what the order of the D.P.H. purports to state. The order of D.P.H., that the Plaintiff was not entitled to full pay means very clearly that the Plaintiff was not entitled to get more than what he got while he was under suspension. The order, in my opinion does not at all suffer from any vagueness. It is as clear as it can be. I therefore, see no point in the contention made out.

*o.p.24.

33. In the end I do not think there is any merit in the suit brought by the Plaintiff. In my opinion he has already been dealt with very leniently by the authorities and I find no substance in the allegations made by him. I therefore, dismiss the suit straightway.

34. But before doing that I must answer other legal objections raised by the Government pleader in the suit. Most of these legal contentions viz., the the suit was not in accordance with the notice given by the Plaintiff under section 80, Civil P.Code; that it was ~~xxxxxxxxxxxx~~ barred under section 9, Civil P.Code; that the suit was barred by estoppel etc., have already been dealt with by me in the principal suit and these pleas have nothing new in them so as to be considered again. My findings therefore

on them are the same as those given by me already.

35. The only 2 new contentions that were pressed were:

1) that the Plaintiff could not get the relief in this suit without seeking to get the orders of suspension and the final order passed by the D.P.H. on 11th April 1953 set aside by this court. and

2) that the suit was barred under the provisions of order 2, rule 2 of Civil P.Code

36. Taking up the first contention I do not find that it can be sustained with effect. The basis of Plaintiff's present suit is that the orders passed by the D.P.H. were illegal and void and not that they were voidable and as such required to be set aside. When an order is attacked as void there is no necessity of getting it set aside; because a void order is void ab-initio. We have to consider Plaintiff's suit as it is constituted and not as it ultimately turns out to be. As remarked by me earlier Plaintiff presses his claim on the ground that the orders were void and that being so it cannot be validly argued that he should have brought the suit for getting the orders set aside. So I do not think the contention has any force.

*37. Similarly the next contention also has no force it it at all. It is the contention of the Government pleader that the Plaintiff should have made the claim that he makes in this suit in the former suit ~~viz.~~ viz., the principal suit and that in so far as he has not included them there the present suit was barred under the provisions of order 2 rule 2, Civil P.Code. Now as already noted above these two suits have distinct causes of action and the reliefs claimed in them are quite different and do not relate to each other. That being so I cannot see how Plaintiff was required to press this relief in the principal suit. The Government pleader too did not press this contention very seriously.

*o.p.25

10/10/56

The contention, therefore is ruled out.

38. In the end, I find no substance in both the suits and dismiss them. The dismissal order of suit number 28/55 will be passed separately in that suit.

O r d e r

Suit dismissed with costs.

18th October 1956

Sd. M.M. Shirkol.
Civil Judge, Senior Division,
Karwar.

Suits.
Kanara.

103 + 3

To recover Rs. 39 being the
arrears of his pay from the
month of February to
November 1954.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3490/E
Sachivalaya, Bombay, 14 February 1956.

Read Government Resolution, Legal Department No.

----- 16033/E,
In the Court of the Civil Judge, :
(Senior Division), Karwar. : dated the 23rd
Civil Suit No. 183 of 1954. : July 1955.
M.S. Naik Plaintiff; : Letter from
vs. :
The State of Bombay... Defendant. : the District

Government Pleader, Kanara No. 961 dated the 20th October
1955, stating that the suit noted in the margin was
decided by the Civil Judge (Senior Division) Karwar on
the 31st December 1955, when the following order was passed:

"Suit dismissed with costs."

Letter from the District Government Pleader, Kanara
No. 74 dated the 30th January 1956, forwarding uncertified
copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order and in the name of the
Governor of Bombay,

original.

SHIKHARE
13/2

D.P. SHIKHARE
Deputy Secretary to Government.

To

The Local Self Government and Public Health Department
The Director of Public Health (Bombay State), Poona,
The Collector of Kanara, Kanara.
The District Government Pleader, Kanara.

hsp/11/2

Submitted for signature

13
11/2

supd

D.S. (Civil)